

ECONOMIC IMPACT OF REGULATIONS ON THE 7TH DISTRICT OF MINNESOTA

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES, AND REGULATORY AFFAIRS
OF THE

COMMITTEE ON GOVERNMENT
REFORM AND OVERSIGHT
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

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ECONOMIC IMPACT OF REGULATIONS ON THE 7TH DISTRICT OF MINNESOTA

MONDAY, AUGUST 7, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES, AND REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
St. Cloud, MN.

The subcommittee met, pursuant to notice, at 1:30 p.m., at the Stearns County Building, 705 Courthouse Square, St. Cloud, MN, Hon. David McIntosh (chairman of the subcommittee) presiding.

Present: Representatives McIntosh, Peterson, and Gutknecht.

Staff present: Mildred Webber, staff director; Karen Barnes, professional staff member; David White, clerk; and Bruce Gwinn, minority professional staff.

Mr. MCINTOSH. The Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs is convened to order.

As chairman of this House subcommittee, I would like to welcome you to our seventh field hearing. We have already traveled to Virginia, Maine, Indiana, Pennsylvania, and Florida to hear what Americans think about our Federal regulatory system.

I would like to thank my two colleagues for conducting this hearing with me today. First, Congressman Collin Peterson, the ranking member of the subcommittee who has invited us to this meeting in St. Cloud. He and I have worked closely on the regulatory moratorium and riders in the appropriations process to defund unnecessary regulation. And he has been a person, although we sit on different sides of the political aisle, who has worked very closely in making sure this subcommittee's work product is useful and effective.

Second, Congressman Gil Gutknecht, a fellow freshman on the subcommittee and a Minnesotan who represents the Rochester area, who has been very active in health care and overregulation in that area.

I've also noticed that Minnesota has the greatest influence of any State on our subcommittee because of their leadership in this area.

The mission of our subcommittee is to cut back on unnecessary and burdensome and sometimes just stupid regulations. Redtape and excessive regulations are choking America's competitiveness, costing workers their jobs, forcing families to pay more for everything from food to cars, and causing farmers to lose their property.

They even force local taxpayers to pay higher rates when the local governments have to comply with unfunded Federal man-

dates. Congress is committed to putting a hold on new regulations and cutting back on unnecessary redtape. We will force the bureaucracies to consider the loss of jobs and other costs and use good science and protect private property rights when they regulate.

In the elections last November, Minnesotans and Americans everywhere made it clear they want to change the way business is done in Washington. So far in the 104th Congress many of my colleagues have made this our chief mission.

Today we hold this hearing to hear what the people of Minnesota want in terms of cutting back on regulation and redtape.

The ideas communicated here today will help inform the regulatory debate in Washington and will help this subcommittee formulate further steps in addressing this problem. Particularly, your suggestions today will help us identify regulations that can be addressed through Corrections Day.

This is a new process that Speaker Gingrich has instituted where in the House of Representatives twice a month we will repeal onerous and burdensome regulations. He has appointed both Congressman Peterson and me to serve on an advisory committee to implement this new plan.

Significant regulatory reform is needed to stop the growth of big government and regulations that have crept up over the last 30 years. Currently, there are 110 different agencies with over 130,000 employees issuing, enforcing, and writing regulations every day. In 1994 alone there were 64,914 pages of new regulations in the Federal Register.

Furthermore, the cost of regulations has skyrocketed. The Clinton administration National Performance Review estimated that it cost us \$430 billion per year for Federal regulation. Experts in the private sector have indicated it could be as much as \$600 billion per year. That is about \$6,000 for every household in America.

The burdens of regulation represent a hidden tax on the American middle class. Companies are forced to comply with regulations and pass along those costs to the consumer. For example, 10 percent of the cost of groceries are due to the regulatory burdens passed on from the Federal Government.

Sometimes we see regulations that just don't make any sense. In our Florida field hearing we heard from a small businessman, David Hurley, who said that he had stopped the growth in his company at just below 50 employees because he doesn't want to be burdened with a whole new set of regulations that come into place once he gets over 50 employees.

The real losers there are the men and women who could have jobs with that small business and others like them.

Today I want to hear from a variety of people in this area, small businessmen who are struggling under these regulations, representatives from local government and others who want to testify in how they see we can cut through a lot of this regulatory redtape.

If the gentleman in the audience will let us proceed—if the gentleman will please take his seat, we will have an open session at the end of this proceeding in which anyone who wants to, may at that point, testify. And we will keep order in the meantime so that everyone has a chance to be heard.

We do want to hear from all sides in this debate so that we can take a record back to Congress on what problems there are in the regulatory process.

I will ask everyone who participates to keep their testimony to 5 minutes so that we will have time to hear people at the end of the process, and so that everyone will have a chance to get their views into the record.

Any additional statements or written papers that you would like to be made part of the record can be submitted, and we will include them as part of the official record.

Before we start on our first panel, let me turn to Mr. Peterson. Would you like to make an opening statement?

Mr. PETERSON. Thank you, Mr. Chairman. Good afternoon, everybody. I'm glad you're here with us today as we continue our effort to overhaul the system of Federal regulations and hopefully to make government better and smarter for all of us.

I want to thank you, Mr. Chairman, especially for bringing the subcommittee to Minnesota's Seventh District.

As the chairman has indicated, we have traveled to a lot of other parts of the country, and we are going to spend the next couple of days here in Minnesota.

You and I, Mr. Chairman, have been working together on this subject since this new Congress convened back in January, and as we have traveled around the country we have heard a consistent theme: make government smaller; make government work more efficiently, and get rid of intrusive and expensive regulation that makes no common sense.

That is a tall order, and the more I get into this the more I realize what a tall order it is. But I think because of the commitment this subcommittee and our working together on these goals that we are making some progress, and I'm hopeful that eventually we will change the mentality of the process.

During the first 7 months of the 104th Congress we, I think, had an extraordinary record in this subcommittee where our jurisdiction is concerned.

Regulatory reform, because of the chairman, has been at the top of our agenda from the outset. And despite considerable resistance from the entrenched bureaucracy in Washington, the House has passed legislation that just might get us all going in the right direction, provided that we can get the Senate focused as much as we've been on these issues.

In January this subcommittee got right to work on this subject and by the end of February we passed a moratorium on regulations to give us kind of a timeout so we could examine what we're doing and see if there is a way we can do things better.

We also passed cost-benefit analysis and risk-assessment legislation, Regulatory Flexibility Act, and a number of different proposals, including the Regulatory Sunset Act, which we just passed, I think, what, a few weeks ago, 3 weeks ago, which is going to require that these agencies are going to have to justify these regulations or they're going to sunset.

A lot of you may not know, but we have 204 volumes of Federal regulations. And if you sat down to read these regulations 40 hours

a week, it would take you 8 years to read all of the Federal regulations.

And if you look at these, you will find out a lot of them are out of date. A lot of them conflict with each other. And frankly, a lot of these regulations I don't think anybody realizes that they are there. We just, frankly, have too much in this area.

The Sunset Act, I think, should be one of the ways we can start to take a look at what is on the books and see if there is a way we can start to eliminate some of these regulations.

At the same time, I think, requiring that we have a cost benefit analysis and risk assessment is going to make sure that we have a more sensible approach to some of these regulatory issues. Quite often it seems like we get regulations that put an awful lot of burden on people and get very little extra incremental value in terms of environment or health and safety.

Frankly, the bureaucracy in Washington seems to get more hung up on whether you follow the process and whether you fill the forms out than whether you accomplish anything. And that's, frankly, a lot of what we're trying to change here with this subcommittee.

We have worked well together. I will have to say that in the House we've had a good bipartisan support on just about all, I think, of the legislation that we've passed. We've had anywhere from 50 to over 100 Democrats on some of these bills supporting the work that was done.

And part of the reason that has happened is that the chairman and others have been willing to listen to our views. And like everything in this world, these bills aren't exactly what I would like, but a lot of our concerns were addressed. And we feel like if we can keep this process moving, then in the end we're going to be able to accomplish something that is useful.

I think one of the most hopeful reasons is because the chairman himself is committed to using this subcommittee for oversight over Federal regulatory affairs.

I have to tell you, I serve on the Agriculture Committee and get involved in other issues. This is not the most fun thing in the world. In my judgment there is nothing more boring than going to hearings on Federal regulations.

But the chairman actually likes this, and it is great that he is in this position because he, I think, is committed to doing oversight and changing this process. Frankly, that is what it is going to take. It is not going to—we're not going to be able to turn this around overnight, and we're going to have to keep the pressure on.

Last, I would just like to say that—and anybody can see this if they want—we made available to people, I think, 2 or 3 weeks ago that we were going to be having these hearings.

I would not agree that anybody has been excluded. When we heard that folks from the environmental community were interested in testifying and felt like they couldn't, we sent them a letter. I believe it was last Wednesday when we first heard about this. I sent them another letter on Friday, and you can see these letters if you want.

They told us that they thought that this hearing was a sham, was a dog and pony show, and that they were not going to testify.

And, you know, they can take that position if they want, and I apologize if they felt like we didn't get to them early enough in the process, but I do not agree that anybody was excluded from being involved in this process.

I will agree that we maybe have a different point of view than some of you folks might have. There are a lot of folks in this country who think we don't have enough regulations and think we need more of them.

I frankly disagree with that, but I wish we could get to a point where we could be talking about specifics and not all this inflated political rhetoric that goes on around this issue.

We had a meeting of the coalition, the so-called blue-dog Democrats with the President on Friday where I—we took up this issue of the EPA riders that have been in the press and some of the other issues where we think there has been a lot of misinformation going around.

And we presented to the President an analysis of the 17 riders that have been controversial. And the President is going to be getting back to us and responding to our point of view to see if we can come to some understanding on this.

I would say to those in the audience that want to get involved in this dialog: I will make this available to any of you. My staff, Mark Browell or Edna Ramson here have these 17 points in that EPA bill, and I would very much appreciate you looking at it and getting to a debate on the specific issues.

I frankly am frustrated by the lack of veracity in some of the dialog that goes on, on some of these issues. Again, I hope that those of you who are here who feel like you have been excluded, that you will remain. I don't agree with that. Again, I will make these letters available to anybody who wants to see them.

Again, Mr. Chairman, thank you for coming to St. Cloud. We very much appreciate you taking time out of your busy schedule. I, like you, look forward to hearing from the ordinary folks of Minnesota, what they think about the Federal Government.

Mr. MCINTOSH. Thank you, Mr. Peterson. Thank you and your staff for helping make arrangements for this subcommittee hearing today. It would not have been possible without you and your help.

Mr. Gutknecht.

Mr. GUTKNECHT. Thank you, Mr. Chairman. I will be brief because I know we've got some excellent people here to testify. I look forward to their testimony.

We've been having an interesting debate in Washington and I suspect what you've heard already today is sort of an adjunct to that.

The debate is really between those who believe, in terms of regulation, that the glass is half empty and those of us who have come to conclude that the glass of regulation is already filled to overflowing.

And what we have seen and what we hear many times from our small business people and from our farmers and even from some of the bigger business people, that the Federal Government has, over the last 30 or 40 years, begun to propose more and more of these \$50 solutions to \$5 problems.

So I think the work of this subcommittee is extremely important as it relates to small business people, as it relates to farmers, and ultimately as it relates to our ability to compete in the world marketplace.

So I am glad that the subcommittee, two of the most important people on the subcommittee are here today. I think the testimony will be excellent. I look forward to hearing it, and I say let the debate begin.

Mr. MCINTOSH. Thank you very much, Mr. Gutknecht. I appreciate you coming today and tomorrow we're going to be having hearings over in Rochester, in your district. We look forward to those as well.

Let me call forward the first panel. If you could take a seat here in front. Karen, on the subcommittee staff, has put out nameplates so we will know who you are.

And while they're doing that, if I could ask the people in the back row—apparently there is an overflow crowd of people who would like to come in and hear the proceeding—to make as much room as possible, if the back row of chairs could move forward as far as possible, I think we can create some standing room behind you for additional people to take part in the proceeding. Thank you very much.

Before we start with introductions of our first panel, Chairman Clinger, who is the chairman of the full committee, has requested that we swear in all of the witnesses before our hearings.

If I could ask all of you to please rise and raise your right hands. [Witnesses sworn.]

Mr. MCINTOSH. Our first witness is Mr. Harold Anderson who is president of Anderson Trucking Service.

Thank you for coming today, Mr. Anderson. Please proceed.

I would ask if your written testimony goes over 5 minutes to summarize and then we can put the full thing into the record.

STATEMENTS OF HAROLD ANDERSON, PRESIDENT, ANDERSON TRUCKING SERVICE; MICHAEL HELGESON, CEO, GOLD'N PLUMP POULTRY; BRUCE GOHMAN, PRESIDENT, W. GOHMAN CONSTRUCTION CO.; AND GREG BENEDICT, VICE PRESIDENT AND GENERAL MANAGER, LONG PRAIRIE PACKING CO. AND SIMPLE MEATS

Mr. ANDERSON. Good afternoon. My name is Harold Anderson. I'm president of Anderson Trucking Service, ATS, headquartered in St. Cloud, MN. ATS is a family owned truckload carrier founded in 1955.

Last year our company operated 525 company trucks, 400 owner-operators. We have over 200 administrative support personnel and we had revues of \$125 million.

I appreciate the opportunity to appear this afternoon regarding the burdens of Federal Government regulation on small business.

Many of the Government regulations problem we have encountered have centered around the EPA. When it comes to highway planning and development, EPA should be advisory and not controlling. Here are a few examples of what I mean.

The local Highway 23 project is one that we have that is of economics and safety as it relates to ATS and the public. Just west

of St. Cloud, Anderson Trucking Service operates a large maintenance facility. This is on Highway 23 which is two lanes at the present time. Further plans in the area call for Highway 23 to be widened into a four-lane highway.

We have asked that in the widening process, in addition to turn lanes being installed, that the widening process would include a median separation. A width of no less than 80 feet is needed between the lanes so that a truck would have room to stop before crossing over to the other lane. This is a safety factor and a key safety factor.

Our property is on a township road which leads up to this intersection. The present plan of a 50-foot median separation would cause our trucks to extend into the other traffic lane when crossing from one lane to another.

This situation is caused by the limitations imposed by the EPA because a small portion of the land that we would be willing to give up is considered a wetland. The highway department is prohibited by the EPA from doing this.

Millions of dollars will probably be spent on this portion of highway. Yet, when it is finished it still will not accommodate trucks entering or crossing in a safety manner. It is time to consider the very serious economic effect that this can have in terms of safety and efficiency. The existing laws of today are not flexible enough to accommodate practical solutions to even minor problems.

Future four-lane development of Highway 23 is now planned to go through the towns of Rockville and Cold Springs instead around the towns, due to EPA restrictions regarding the use of farmlands in the countryside.

The following comments are from a local Minnesota D.O.T engineer. One, wetland regulations could be more sensitive to safety issues. Small changes in median widths have higher impacts on safety than the marginal benefit of wetland reduction. Agencies request guardrails instead of allowing safe roadway slopes in some cases. This is only marginally beneficial to wetlands but a bigger safety sacrifice.

Wetland regulations should clearly differentiate between previously disturbed and undisturbed wetlands. Additional impacts caused by the projects on the existing roads are usually small strips and should not be challenged to the extent that draining and filling of undisturbed wetlands are.

Historic regulations apply to a State and Federal regulation that don't apply to private and nonstate/federally funded projects. The public spends tons of money to preserve an insignificant portion of the total resource while if a landowner has kept land containing a resource, it could be destroyed at will. The system is very inconsistent.

Our Stearns County engineer stated at a meeting last Tuesday that they purchased wetlands in western Minnesota for \$54,000 to replace wetlands that was needed for Stearns County road improvements.

Mr. MCINTOSH. Mr. Anderson, if you could go ahead and summarize your testimony, we will put the full document into the record.

Mr. ANDERSON. OK. I'll get the item on fuel tank removal, which will be part of that and which is a problem. And one item would

be the uniformity of State law with regard to size and weight which will submit to you.

Mr. MCINTOSH. Thank you very much. I appreciate that.

[The prepared statement of Mr. Anderson follows:]

Before the
House Subcommittee on National Economic Growth,
Natural Resources and Regulatory Affairs
August 7, 1995
St. Cloud, MN

Good afternoon. My name is Harold E. Anderson. I'm President of Anderson Trucking Service, Inc. (ATS), headquartered in St. Cloud, MN. ATS is a family-owned, truckload carrier founded in 1955. Last year, our company operated 525 company trucks, 400 owner-operators and had revenues of \$125 million.

I support a moratorium on federal regulations because I want Congress to take a look at what existing laws and regulations have done to businesses like mine. I hope you'll be able to stop new rules long enough to find a way to bring some sanity to the compliance costs we already face. Here are a few examples of what I mean.

Many of the government regulation problems that we have encountered have centered around the EPA.

Highway 23 Project:

A local EPA problem that we have had is that of economics and safety as it relates to ATS and the public. Just west of St. Cloud, Anderson Trucking Service operates a large maintenance facility. This is on Highway 23 which is two lanes at the present time. Future plans in the area call for Highway 23 to be widened into a four-lane highway. We have asked that in the widening process, in addition to turn lanes being installed, that the widening process would include a median separation. A width of no less than eighty feet is needed between the lanes so that a truck would have room to stop before entering in the opposite direction. This is a key safety factor. Our property is on a township road which leads up to this intersection. The present plan of a fifty-foot median separation would cause our trucks to extend into the traffic lane when crossing from one lane to another.

This situation is caused by the limitations imposed by the EPA. Because a small portion of the land that we would willingly give up is considered a wetland, the Highway Department is prohibited by the EPA from doing this.

Millions of dollars will probably be spent on this portion of Highway 23 and yet when finished it will still not accommodate the trucks entering or crossing in a safe manner. It is time to consider the very serious economic impact that this can have in terms of safety and efficiency. The existing laws of today are not flexible enough in order to accommodate practical solutions to even minor problems.

Comments from a local MN D.O.T. Engineer:

1. Wetland regulations could be more sensitive to safety issues.
 - Small changes in median widths have higher impacts on safety than the marginal benefit of wetland reduction.
 - Agencies request guardrail instead of allowing safe roadway slopes in some cases. Only marginally beneficial to wetlands but bigger safety sacrifice.
2. Wetland regulations should clearly differentiate between previously disturbed vs. undisturbed wetlands. Additional impacts caused by projects on existing roads are usually small strips and shouldn't be challenged to the extent that draining or filling undisturbed wetlands is.
3. Historic regulations apply to state and federal projects. Regulations don't apply to private and non-state/federally funded projects. Public spends tons of money to preserve/avoid an insignificant portion of the total resources, while, if a landowner had kept land containing a resource, it could (and many are) be destroyed at will. The system is very inconsistent.

Our Stearns County engineer stated at a meeting on Tuesday of this week that they purchased wetlands in a western Minnesota County for \$54,000 to replace, on a two-acres-for-one basis, wetland that is needed for Stearns County road improvements.

Fuel Tank Removal:

Anderson Trucking Service, Inc. removed fuel tanks in all locations (about a dozen) to meet EPA regulations. No leaky tanks were found. Our experience with the Minnesota EPA was favorable - they were practical, reasonable and advisory. However, our experience with the Illinois EPA was very unpleasant.

Today we are buying 90% of our fuel at filling stations. The cost of fuel is greater than if we had our own pumps, but because of trying to satisfy the EPA, we have foregone this benefit.

Oil Spill:

An experience that ATS had in Alaska in the fall of 1992 occurred at Atigun Pass between Prudhoe Bay and Fairbanks. We had a truck hauling fuel oil to a pumping station in icy conditions. The truck slid into the ditch going around a corner, the fuel tank tipped over and a substantial portion of the fuel spilled onto the frozen ground.

The clean-up effort involved hauling snow and gelled fuel oil to the disposal site in the winter. The final clean-up was done in the spring, which involved taking some of the dirt to clean up the soil which might have been effected.

Fuel Spill (continued):

The cost of clean-up to Anderson Trucking Service was \$584,000.00.

All of the spilled fuel was contained at the site in the ditch and did not run off. The wise and practical solution would have been to set the oil on fire and burn it on site instead of removing it and putting it in a disposal site. It would have burned clean with no damage whatsoever. There is no civilization within two-hundred miles from the spill site.

From 1969 until today, this was the only spill we've had by our operations. We had no insurance coverage for an unusual and unexpected expense of this magnitude.

Uniformity of State Laws:

An area where the federal government could be helpful, one that I believe could result in benefits to the truck transportation industry and the consumer is the study and research of the economic benefits of uniformity of state laws, especially as they pertain to the movement of overweight and oversize loads.

Today, there are many variations of laws that restrict the movement of oversize/overweight loads across the U.S.A. The problems today are several, such as:

1. The variety of truck and trailer equipment to meet requirements of different states.

Uniformity of State Laws (continued):

2. The extra miles of travel necessary to go around restrictive states.
3. The excessive time delay to obtain permits due to the fact that every state has its own permit section.

Numerous other examples can be furnished upon request.

There is a tremendous amount of money that can be saved by uniformity of laws pertaining to size and weight movement. Shippers have told us that the ocean costs from Europe to east coast ports are less than trucking from the Midwest. These excess costs would be significantly reduced with uniform regulation by the various states.

States not willing to participate in uniformity should have their allotment of federal funds reduced.

Thank you for the opportunity to present our information.

Mr. McINTOSH. Our next speaker is Mr. Mike Helgeson who is the CEO of Gold'n Plump Poultry. Thank you for coming, Mr. Helgeson.

Mr. HELGESON. Good afternoon. Thank you for coming to St. Cloud and presenting this opportunity for us.

My name is Michael Helgeson. I'm with Gold'n Plump Poultry. We're an integrated broiler producer company with operations in central Minnesota and western Wisconsin.

We market a variety of high-quality poultry products throughout the upper Midwest. Currently we employ 1,800 people and have 250 contract growers that help us support an annual sales of \$150 million.

Much has been noted already about the need for regulation reform. Just to note that current regulations cost our economy about 7.9 percent of our gross national product and is administered by over 110 agencies.

What this does is it puts the United States at a disadvantage in terms of international competitiveness and ultimately results in fewer jobs for American workers.

The export market is a driving engine for growth in the economy, and this also includes the broiler industry. The broiler industry is experiencing dramatic increases in growth of exports. In 1985 only 3 percent of our production was exported. This year it is projected to exceed 12 percent of our total production.

We will be able to maintain this growth in exports if we are able to remain competitive with other exporting companies. In the last few years competition has intensified from countries like Brazil, China, and Thailand which are very efficient producers.

Why is regulatory reform important to maintain our competitive position in the world markets? The food and agricultural system in the United States employs 21 million people and generates 16 percent of the Nation's income. Yet, agricultural policies and regulations of the thirties are burdening our current system.

We need to modernize agricultural policies to achieve market-based reforms that will allow the sector to prosper and grow into the next century to take advantage of the opportunities.

Within the next 30 years world population will reach 8 billion people and demand for food will double. The new trade deal negotiated under general agreement on tariffs and trade, or GATT, gives agriculture unprecedented growth opportunities. The fish and agricultural system will allow the United States to benefit from those opportunities.

In recent years one-fourth of America's farmland has been idle in an unsuccessful attempt to raise prices. Instead, they have signaled to foreign producers to increase their production at the expense of the United States.

As a result, we have steadily given up market share of world grain trade. Acreage reduction programs should be eliminated and the Conservation Reserve Program should only apply to land that is environmental sensitive.

Farmers should have an income safety net where these programs should be price and production neutral. Income safety programs should not attempt to determine by Government directive the price nor the supply of any commodity. By ending supply management

and giving farmers planting flexibility, by investing resources in research and market development, we can prosper in the world market.

In addition, the red meat and poultry industries are already the most heavily regulated food industries in the country. The passage of the Pathogen Reduction Act recently proposed by the Food Safety and Inspection Service or FSIS in an attempt to address food safety concerns would add yet another layer of burdensome regulations.

Gold'n Plump fully supports the need to move the current inspection system to a science-based system that incorporate hazard analysis, control points or principles to assure the safest food supply possible.

It would be far more effective to reallocate limited inspection resources from both labor-intensive activities to focus on activities having a direct bearing on public health.

The proposal as presently drafted not only reaffirms the traditional inspector's role while adding redundant regulations and activities to the system. There is already a limited supply of meat/poultry inspectors.

Recently, Gold'n Plump Poultry was denied a request for additional inspectors to staff our night shift for April 1996. This could have a serious impact on our \$45 million expansion program underway, and I cannot operate without inspectors.

I would like to thank you for this opportunity to address the regulatory issues. I look forward to working with you to create a regulatory environment which protects workers and consumers while assuring American producers the opportunity to compete in international markets.

Thank you.

Mr. MCINTOSH. Thank you. Thank you for coming today.

[The prepared statement of Mr. Helgeson follows:]



I would like to welcome Representative McIntosh and Representative Peterson to St. Cloud and compliment you for your leadership on regulatory reform.

My name is Michael Helgeson, C.E. O. of Gold'n Plump Poultry. Gold'n Plump is an integrated broiler company with operations in Central Minnesota and Western Wisconsin. We market a high quality branded chicken products throughout the upper Midwest. We currently have 1,800 employees and 250 contract growers with an annual sales volume of \$150 million.

Regulatory reform is needed to improve our international competitiveness which translates into more jobs and higher productivity. The benefits of regulation are becoming fewer while the costs are accelerating. The Clinton Administration recently estimated the cost of federal regulations to be \$430 billion per year - or about 7.9 percent of our nation's Gross National Product. Federal regulations are issued now by 110 different agencies.

The export market is the engine driving economic growth for many U.S. industries, including the broiler industry. The broiler industry experienced dramatic increases in exports. In 1985, only 3 percent of broiler production was exported. This year its projected to be more than 12 percent, and should continue to grow assuming U.S. poultry products remain price-competitive with other poultry exporting countries. However, competition is intensifying from countries like Brazil and Thailand which are very efficient producers.

Which leads me to my next point, American agriculture. The food and agricultural system in the United States employs 21 million people and generates 16 percent of the nation's income. Yet, agricultural policies and regulations of the 1930's are burdening our current system. We need to modernize agricultural policies to achieve market based reforms that will allow the sector to prosper and grow into the next century to take advantage of the opportunities. Within the next 30 years, world population will reach 8 billion people, demand for food will double. The new trade deal, negotiated under the General Agreement on Tariffs and Trade (GATT) gives agriculture unprecedented growth opportunities. However, in recent years one fourth of America's farmland has been idled in an unsuccessful attempt to raise prices; instead they have signaled to foreign producers to increase their production at the expense of the United States. As result we have steadily given up market share of world grain trade. Acreage reduction programs should be eliminated and the Conservation Reserve Program should apply only to land that is environmental sensitive. By ending supply management and giving farmers planting flexibility, by investing resources in research and market development, we can compete and prosper in the world market.

Mr. McINTOSH. Our next witness in this panel is Mr. Bruce Gohman who is president of Gohman Construction Co.

Mr. GOHMAN. Good afternoon. I would like to thank Chairman McIntosh, Representative Gutknecht, Representative Peterson for allowing me to testify here today.

My name is Bruce Gohman and I am president of W. Gohman Construction Co., located in St. Joseph, MN.

The background of W. Gohman Construction Co., is that we've been in business 45 years doing general building construction and primarily in commercial, industrial, and institutional building and remodeling business. Currently, we have 47 employees located on six construction sites and our base office. Our service area is approximately a 60-mile radius of St. Cloud.

Today I would like to talk about regulations concerning OSHA, wetlands regulations and compliance with Government regulations.

On OSHA, our small company, in 1994, had 16 inspections. I believe that the inspectors are primarily looking for violations, not necessarily ways to make job sites safer, as during the time that the OSHA has been in place, we haven't seen any significant change in the amount of accidents that have occurred.

Primarily, one of the other concerns that I have is that when OSHA comes out they presume you to be guilty until you can prove your innocence. You get a citation, and then you try to fight your way out of it instead of being the rest of the way; of being innocent until being proven guilty.

Before we had OSHA we used to have what was called the Industrial Commission, and they used to work with you to try to help with situations rather than issue citations and generate just pure revenue.

Our safety record, I feel, has been very good in our company. In with all those inspections we had last year we had two citations, both of them considered to be minor. One, \$110 for an improper gasoline can at the College of St. Benedict, which that project had three inspections. Another one for \$110 for a saw guard on a school project in Melrose, which project had four inspections in 1994.

In 1993, we had two citations, both for paperwork kinds of things. We were charged with not training employees on right to know, and not keeping full documentation at every job site.

We contested the citations and they were dismissed by the attorney general after a great deal of documentation was provided. I can show you the kind of documentation that we have for that.

We've put through a lot of efforts to provide our workers with a safe and healthy workplace primarily through the use of training and safety meetings, awards for safe working time. For example, for every 90 days of work without a loss-time injury we have an award that is provided. And these vary in order to keep it interesting for our people.

There is more time spent on documentation to prove compliance than sometimes is actually done on actual worksite safety. We feel that these need to be corrected so that we can do a better job of actually making sure that our people are on a more safe condition rather than worrying about bureaucracy.

Wetlands is the second issue that I would like to speak about. This causes a great deal of difficulty in the construction industry

because the rules are always changing, and we never know what we can and what we can't do. It is just a very difficult situation.

Also, the geography of our area is such that we have a large number of wetlands. And it is very difficult for people with an overabundance of wetlands to understand why the importance and value of those wetlands and to work with that.

And basically, what has been done in the past, even though we have a large number of wetlands in our area, it is that we have been required to create two units of—for example, two acres of wetlands for every acre of—from dry land for every acre of wetland that would be required to facilitate some kind of a project.

Mr. MCINTOSH. Go ahead and summarize if you would like.

Mr. GOHMAN. The only other thing that I have here is talking about Government compliance. In our small business of just 40-something employees, we just did a calculation for the last year that our office staff spent about 1,384 hours to keep up with the regulations and the rules and so on, particularly because there is a lot of duplication of efforts for one agency to another.

And to conclude, I would just like to say that after spending over 30 years in the business it seems that we spend far too much time trying to document compliance of various rules and regulations than actually going out and doing our business.

I would like to thank you for the opportunity to be here.

Mr. MCINTOSH. Thank you very much for your testimony.

Our final witness on this panel is Mr. Greg Benedict who is the general manager of Long Prairie Packing Co.

Mr. Benedict, welcome and thank you.

Mr. BENEDICT. Good afternoon. My name is Greg Benedict, and I'm am vice president and general manager of Long Prairie Packing and Simple Meats in Long Prairie and south St. Paul, MN, and Yankton, SD.

We're part of a family owned business, that was started in 1946, which currently employs over 600 people, processing over 500,000 head of cattle per year.

I appreciate the opportunity to testify today about the impact of regulations on our company and on the meat industry. I think ordinary citizens share your view that regulatory agencies have gone astray and that regulations no longer include the common sense that most of us bring to bear to deal with real problems in our everyday lives.

My company's experience quantifies some of the regulatory costs on a smaller scale. For over 10 years, until 1990, I handled all of the regulatory affairs myself as well as all safety and personnel matters.

With increased Government regulations over the past couple of years, although we have not increased sales or volume, we have had to add three more people to deal with more and more laws and regulations.

One problem we deal with is conflict between Government agencies. One conflict that arises between USDA and OSHA are pending proposals that have major consequences for my company. The meat packing industry ranks among the highest of all industries in the incidence of cumulative trauma disorders or CTD's.

In 1990, OSHA published voluntary ergonomic guidelines for the meatpacking industry, seeking to minimize the incidents of CTD's.

Also being considered is USDA's Pathogen Reduction Hazard Analysis Critical Control Point's proposed rule. Unfortunately, this latter rule proposes time and temperature requirements for slaughter processing facilities that are known to aggravate CTD's.

But OSHA is not the only culprit in illogical regulatory strategies. One case in point illustrates our frustration in dealing with another Government agency.

On Saturday, June 22, 1991, near midnight, our plant in south St. Paul had a control valve, a new control valve, malfunction in our ammonia refrigeration system. This ammonia is the same ammonia used by farmers for fertilization of fields all over this country. Nevertheless, the release of ammonia was enough for about 1,000 pounds, which triggered notification to the National Response Center which we did on Monday morning, June 23, 1991.

More immediately, on Saturday night we notified the south St. Paul Police Department and the south St. Paul Fire Department, which in turn notified the State Emergency Response Commission. We also followed up with a written response on July 5.

We did not try to conceal this release. We believe we notified everyone necessary in a timely manner. There was no loss of life or limb; no injuries of any kind. We replaced the malfunctioning valve and thought everything was fine.

On October 21, 1993, over 2 years later, I received, by certified mail, an administrative complaint from the Environmental Protection Agency charging us under section 109 of the Comprehensive Environmental Response Compensation and Liability Act, section 325 of the Emergency Planning and Community Right to Know Act.

We were being charged not for failure to notify, because we did notify everyone on the next business day at 8:20 a.m., but because that was not good enough for being charged with failure to notify immediately the National Response Center. This, in spite of the fact that the police department, the fire department and the State emergency response center all had immediate knowledge and successfully dealt with the problem.

The amount of the fine was \$75,000. We could not believe it. So we compounded the problem; we hired an attorney. [Laughter.]

Well, the result was hundreds of hours and thousands of dollars later we finally reached an agreement on March 3, 1995, and put an end to this situation that served no useful purpose. With regard to HASAP, we currently spend \$1.5 million a day inspecting meat and poultry products.

In addition to the regulatory demands already placed upon the meat and poultry industry, USDA's Pathogen Reduction, as a proposed rule, by the Food and Safety Inspection Services own admission will result in an additional \$73.5 million in cost to the industry.

Unfortunately, many experts feel that the agency's estimate of HASAP cost requirements to implement the proposal are underestimated, probably significantly.

In conclusion, I think we must prioritize our regulatory resources, provide flexibility, use modern risk-assessment and man-

agement techniques that are science based, add cost-benefit analysis to the equation, and enhance risk education for and communication with the public.

Overregulation assumes the worst. Partnership and sensible regulations will provide the opportunities for producing the best. I hope my comments will help you convince your colleagues for the overall need for this balance.

Thank you for your consideration.

Mr. MCINTOSH. Thank you very much, Mr. Benedict. I appreciate that.

Now we will take questions from the panel members. David, if you could be religious in keeping us to 5 minutes, we will make sure we have time for everybody.

My first question would be for either Mr. Benedict or Mr. Helgeson. You talked with us a little bit about the USDA regulations that have been kicking around under HACCAP and the inspection service. I was interested to note that you felt that that might impose requirements that would actually make it more likely that you had repeated motion, trauma, as a result of that that OSHA and the Labor Department is trying to regulate with its ergonomics rule.

Is that something where you could see yourself being put into a bind, where one agency tells you to move in one direction and then the other in the opposite?

Mr. BENEDICT. Absolutely. I think that OSHA's ergonomic requirements that we change some of the jobs and change some of the positions on people so that they do not develop cumulative trauma disorders is fine with industry. In fact, it is good for our industry.

But then USDA comes along and has the time and temperature requirement on beef carcasses, for example, that makes it more difficult for people to operate on the animals, and in turn causes muscle soreness and these cumulative trauma disorder.

Mr. MCINTOSH. Yes; Mr. Helgeson.

Mr. HELGESON. Let me just add an example to that: USDA requires certain comfortable temperatures for meat processing, typically under 50 degrees. In some cases with their new Pathogen Reduction Act, it requires temperatures down to 40, 30, and 40.

Well, the colder temperatures do aggravate the cumulative trauma syndrome. So it does create a conflict in terms of trying to maintain good safety as well as worker safety.

Mr. MCINTOSH. So you could conceivably, if both of those regulations went forward as they're being discussed, find yourself in the position where you've got conflicting and therefore impossible-to-comply with requirements?

Mr. HELGESON. Yes, that's correct.

Mr. MCINTOSH. Well, we've seen that in several areas.

Let me just ask one general question for each of the panelists: Have you ever, because of the regulatory burdens, reached a situation where you have decided either to reduce the level of employment or get out of a certain level of business or maybe not go forward in an area where you had anticipated you would? If so, describe that briefly for us.

Mr. Anderson.

Mr. ANDERSON. I think we have more likely not gone forward because of Government regulation, held back on expansion.

Mr. MCINTOSH. For example, has the inability to put in fuel tanks; has that kept you from expanding?

Mr. ANDERSON. Yes, to the extent of the cost. It is a higher cost to buy the fuel.

Mr. MCINTOSH. Yes; Mr. Helgeson.

Mr. HELGESON. Let me just to add to my comment; we currently would like to expand, as I mentioned, in our Wisconsin operation. Under the Poultry Inspection Act, we've not operated the plant without a full staff review of USDA. Yet, at the same time, we're being turned down for additional inspectors. Apparently, this is because of budgetary difficulties within the USDA or the inspection service.

My point is that if the existing staff resources were better utilized, these people could be made available to the industry.

Mr. MCINTOSH. So until they move away from the outdated form of inspection and on to a more updated form, it is putting constraints on your ability to expand?

Mr. HELGESON. Right. And eventually it will be constraints within the whole industry as well.

Mr. MCINTOSH. Mr. Gohman, did you have anything in that area that you would like to add?

Mr. GOHMAN. As I noted in my testimony, we currently have 47 employees and we are very reluctant to seek in excess of 50 people, so that we get into all those new rules that fit there.

Mr. MCINTOSH. Yes. That is becoming a reoccurring theme in some of our field hearings. Thank you all. I appreciate that. Let me turn now to my colleagues.

Mr. Peterson, do you have any questions?

Mr. PETERSON. Thank you, Mr. Chairman. If I could, I would like to—first of all, Representative Jeff Bertram is with us today. He is the chair of the Business Regulation Committee—I don't know if I know the exact name of it in the State House but as I understand it, you have submitted some written testimony. So without objection I would like that to be made part of the record.

Mr. MCINTOSH. Seeing no objection, it will be.

Mr. PETERSON. And I appreciate Representative Bertram being with us, and his leadership in this area and the State legislature.

As we move ahead, I'm sure we are going to be working together, Jeff, more on this. It is not just the Federal Government that has problems with regulations as you're aware.

We also, Mr. Chairman, have some testimony here from some folks from Lenny Lund and Bruce Shore regarding some problems that they're having with ASCAP and BMI. And without objection I would like to make that part of the record as well.

Mr. MCINTOSH. Seeing there is no objection, it will be entered into the record.

Mr. PETERSON. I would also like to acknowledge that we have some other elected officials with us today. I will probably get in trouble now if I start trying to name them, but we did have—Leslie Shoemaker was here. I don't know if she is still with us.

Senator Joe Bertram was with us earlier. He may have had to leave. Representative Steve Yords was here. Steve, I appreciate

your being here. Joe Opats was with us earlier. He apparently had to leave. Rose Arnold, county commissioner, is with us. And Dave Price, senator from this area; glad to have you with us today.

Are there any other representatives?

I'm sorry, Representative Ken O'Tremba from the Long Prairie area. We have one of your constituents up here. We're glad to have you with us today.

And Roxanne Daggett, representative from Prasee, MN, is here with her husband Dave Daggett from the Daggett Truck Line. I used to be their CPA and I used to have lots of trucking clients, so I know about the problems that you have been having with the Federal regulations. I appreciate you being here today, Roxanne.

We had earlier Chuck Winkleman from the city and also the vice president of the city council, Jerry Donalon. They had some meetings with the airport authority. They're trying to get some things worked to get the airport expanded, so we excused them for this afternoon. Harold and I are interested in what they're doing out there at the airport, right Harold?

Are there any other elected officials that I missed?

[No response.]

Mr. PETERSON. We very much appreciate their involvement in this hearing.

Both for Mr. Benedict and Mr. Helgeson, following up a little bit on the chairman's conversation with you, I just wanted you to be aware that I've had Mr. Taylor and Mr. Dear in my office to talk to them about the OSHA and HASAP regulations.

One of the things we found out when we had a hearing in Washington was that when Mr. Dear from OSHA was in testifying that he basically said that he had not been in consultation with the USDA about this issue, which I think points out part of the problem that we're having with this. That we've got different agencies going in different directions and not talking to each other. But he assured us that would not happen in the future.

In any event, we've had a discussion about this, on the ergonomics issues and, also as you know, the mega reg has kind of been put into a different category and they're going to include the industry.

So I think we've made some real progress on both of those issues. And I think this committee deserves some recognition for being a prime moving force behind that whole situation and getting those things brought to the forefront and getting some resolution some problems that could have caused us a lot of trouble, I think, had we not been on top of them.

We very much appreciate you coming here and being with us today. We are happy to be able to report that we've made some progress in the area that you are concerned about.

Mr. Anderson, I guess I wasn't aware of the situation. I mean I was aware of the Highway 23 safety problem, but I frankly had not thought about this situation, I guess was not aware of this 50-foot problem.

Have you been in touch with the folks at the National Highway Traffic Safety Administration about this?

Mr. ANDERSON. Just the local——

Mr. PETERSON. Just local. So they may not be aware of this problem.

I can suggest, if you're interested, that we would very much like to work with you on this in our office here in St. Cloud and try to bring this concern forward. I think it is a very valid concern.

We very much want to do something about the Highway 23 situation, but we don't want to spend a whole bunch of money and then find out that we've got a situation where we haven't really solved all of the problem.

Mr. ANDERSON. Call your office?

Mr. PETERSON. Yes. If you would contact my office here in town, we will work with you and get that to the appropriate folks because I think that is a real valid concern.

Mr. Gohman, I was struck by that 47 employees. The minute I saw that I thought, ah ha, here is another person who is trying to stay a small business.

That is one of the problems, you know. We've had this kind of attitude that, well, we can have all these regulations because we're going to take the little guys out of it and therefore it is OK somehow or other. But what we do is we create these clip effects that have all kinds of other unintended consequences. That is really not the way to address the issue.

I think we need to get to the bottomline fundamental change which the chairman and I are working on. We appreciate you being with us today. My time is up. Thank you all for good testimony.

Mr. MCINTOSH. Thank you, Mr. Peterson. We appreciate that.

Mr. Gutknecht, do you have any questions?

Mr. GUTKNECHT. Well, I don't want to let Mr. Anderson get away too quickly. He may not remember me, but I was in the State legislature and I remember 11 years ago we came to St. Cloud and had a hearing and talked about worker's comp reform.

You testified then. I congratulate you for what's happened I guess in the State legislature this year. And I hope as it relates to regulatory reform that you will not be so long-suffering.

But I really want to get to the meat and poultry. I do want to congratulate Representative Peterson because I think as it relates to the USDA and the farm bill and HASAP, the rewrite of HASAP, I think he has become one of the leading articulators of the problems in the meat and poultry industry.

The chairman alluded to briefly, and I would like to put a point to it, a problem that we have. One of the presidents of one of the largest pizza companies in the United States, pizza stores, told us a story early in the session.

He was told by the Department of Health that if they cut carrots in the restaurants that they would have—I'm sorry—they were told by OSHA that if they cut carrots in their restaurants they had to wear steel mesh gloves.

They were told by the Department of Health that if they wore steel mesh gloves that would be a violation of health standards. So he was really caught between a rock and a hard spot. If they wore the gloves they were in violation of one department. If they didn't wear the gloves they were in violation of the other.

The point I wanted to make—and we've had some interesting discussions, and this isn't so much a question, but you can com-

ment if you want—we've had some interesting debate on this subcommittee.

One of the members is a gentleman by the name of Henry Waxman, who I've come to admire. I don't agree with Henry on many issues, but he is intellectually honest and he is a strong advocate of his particular point of view.

I like to share the story with him that 1½ years ago I was invited to the Governor's mansion to have breakfast one morning.

I and some of my colleagues ate some of the pineapple at that particular breakfast. And we became sick as dogs. To this day the Department of Health has not determined exactly what the bacteria was that caused the infection. But I can assure you we were all sick as dogs.

The interesting thing that I remind Representative Waxman of is that I became ill in spite of all the Federal regulations and all the Federal inspectors and all the Federal regulators, if you will. I become relatively ill over that episode.

I also remind him that I recovered in spite of all of those Federal regulations. The interesting thing, and I guess the point that I want to bring this to is this: Ultimately, isn't it your companies that are responsible for the quality of the product that you put out, and if ultimately there is a problem with any of the food or the poultry or meat products that you're producing, aren't you the ones that ultimately bear that responsibility no matter what we do in terms of additional Federal regulations?

Mr. BENEDICT. That's right. Our name is on the product. We have 600 families that depend on us for a living. And our aim is to produce the best quality that we possibly can using the best technology that is presently available.

My small children eat the meat that comes out of my plant as well as we. And I sure do not want to produce an unsafe product. I don't think all these regulations, sometimes questionable regulations, coming from Washington are going to improve the job that we want to produce safe meat.

Mr. HELGESON. I just want to underscore that. We also very much are part of the product that we produce. It goes out under our company's brand name, Gold'n Plump. And obviously, if there are any problems with it we need to stand behind it. And are subject to whatever it would take to ensure that the meat products are as safe as possible.

In saying that, I think that we recognize that we're dealing with a natural product and bacteria is a naturally occurring substance. So any amount of Federal regulations cannot ban bacteria from occurring in the meat process. What we can do is minimize it through the production process.

I think it is also responsibility that consumers have to ensure that they properly handle products all the way from—whether it is in food service or the restaurants or at home to ensure that the product is handled properly.

Mr. GUTKNECHT. In terms of the numbers of cases of food poisonings, botulus, and so forth, can you share with us what percentage are actually the responsibility of the processors and how much is the responsibility of the consumers? Or don't you have that information?

Mr. BENEDICT. Everything that I've read says that 3 percent of the operation is the responsibility of food plants and 97 percent are the responsibility of food service establishments or the people handling and preparing the food.

Mr. GUTKNECHT. Does that square with what you know, Mr. Helgeson?

Mr. HELGESON. Yeah; that sounds very consistent. Also, the number of cases of food poisoning is actually declining over the last 5 or 10 years. So we are in fact are offering a safer food supply.

Mr. GUTKNECHT. Our time is up. I thank you very much for joining us today.

Mr. MCINTOSH. Thank you all, members of the panel. I will take it from Mr. Helgeson's comments that he doesn't think we can repeal the laws of nature. And I think that would be a wise thing for us to keep in mind as Members of Congress.

Our next panel is several local officials, and as they're coming forward to get set up we will proceed to go ahead and have the name tags.

[Discussion off the record.]

Mr. MCINTOSH. If I could have both of you please rise and raise your right hand.

[Witnesses sworn.]

Mr. MCINTOSH. Mayor Lanning apparently is not able to be with us at this moment. If he is able to come later we will be able to hear from him.

Our first witness then on this panel will be Don Adams, the director of the Stearns County Environmental Services.

Mr. Adams, welcome.

STATEMENTS OF DON ADAMS, DIRECTOR, STEARNS COUNTY ENVIRONMENTAL SERVICES; AND DAVID R. VOLKER, LOSS CONTROL MANAGER, BERKLEY ADMINISTRATORS

Mr. ADAMS. Thank you very much. My name is Don Adams. I am director of the Stearns County Environmental Services Department. This is home for me every Tuesday.

One issue that I wish to address with you is the issue of solid waste flow control. This may deviate somewhat from the other testimony that you are going to be hearing, but this is an issue that is of importance to not only Stearns County, but I think that you will find Olstead County as well shares the concern that we have.

Just to give you a historical perspective, from the late 1970's through the 1980's there was development of a statewide strategy for solid waste management here in Minnesota.

This strategy delineated processing, waste processing, as higher on the waste hierarchy than landfilling.

The Minnesota Pollution Control Agency at that time was actively involved in closing landfills, and counties across the State complied with their directives and began to close their landfills, going from several hundred landfills throughout the State to today just a handful.

During that process, the Tri-county Solid Waste Commission was developed. This entailed Stearns County, Sherburne County and Benton County.

These counties contracted with the Northern States Power Co. with a put-or-pay contract to supply refuse. As part of this process, Stearns County and many other counties in Minnesota passed what are called designation ordinances to ensure delivery of waste to those particular facilities.

Up until the Carbone decision, I believe that the solid waste system here in Minnesota and many other States was relatively stable. However, with the Carbone decision, waste designation ordinances that many counties had enacted were deemed to be illegal for waste that would be leaving the State.

What are the effects of this particular decision? Stearns County, to coin a phrase from Commissioner Arnold, is in a hemorrhage. We're bleeding to death. We have a financial crisis that we are facing. And there are, I believe, a number of different aspects to that.

First of all, since that decision, local governments no longer have the control over future environmental liability for the waste that may be leaving their State. With the system that we did have in place we could assure that our waste was being processed and treated in the safest manner possible. We can no longer ensure that.

One of the real concerns that we have is that we are incurring or may be incurring future environmental liability with no control.

Second, taxpayers are responsible for the contractual obligations that we have with Northern States Power Co. If we don't supply the garbage, we still have to pay.

In addition to those funds, taxpayers are still responsible for their refuse bills.

What we're asking for is that the House pass legislation that would be similar to what the Senate passed earlier this year. The Senate version of the flow control bill would allow those government units which had designation ordinances in effect at the time of the Carbone decision to continue. And we are really sorely in need of your assistance on that matter.

The second issue, as the local government unit that is responsible for administering the Wetlands Conservation Act here in Stearns County, we are very sensitive to the regulatory maze that our constituents must often face in dealing with the wetlands issue.

I would like to point out a program that I believe is working to help reduce regulatory duplication between State and Federal programs, and that is the Corps of Engineers General Permit 17 Program.

The program designers of this program recognize that the scope of the regulated activities between the Corps section 404 regulatory program and the Minnesota Wetland Conversation Act were essentially the same.

Along with granting the authority to Stearns County to administer that portion of the program, the State also made some funds available so that we are able to facilitate our constituents passage through this regulatory maze.

Again, I would like to thank you for this opportunity and certainly urge your help here, especially on the solid waste flow control issue.

Mr. MCINTOSH. Thank you very much, Mr. Adams. So there is a regulatory body that is actually trying to reduce the burden by putting it in your hands more locally so you can use discretion?

Mr. ADAMS. Right.

Mr. MCINTOSH. I'm impressed with that. That's good.

Our next witness in this panel is Mr. David Volker who is the loss control manager with the Berkley Administrators. They are a third-party administrator of self-funded insurance programs in Minnesota.

Mr. Volker, thank you for attending today and welcome.

Mr. VOLKER. Thank you for giving me the opportunity. As you said, my company is the third-party administrator of self-funded insurance programs here in Minnesota.

We provide services for our clients similar to an insurance company, but we're not really an insurance company. We bear none of the risk of loss as an insurance company normally does.

I am appearing here today at the request of the Minnesota and National School Board Association. We administer a very successful self-insurance program for Minnesota school board's trust.

My staff of 13 full-time safety professionals and I also provide workplace injury prevention consultative services to most of the cities in the State, many of the largest private health care providers, a select group of private self-insured employers and about 20,000 other private employers here in the State of Minnesota.

During the past 5 years I guess we've visited at least 10,000 different workplaces around the State helping to prevent workplace injuries.

Our client's employees usually—often ask us to help them research, interpret and maybe even apply regulations because we're perceived by our clients as an alternative, perhaps a less threatening source of reliable information about OSHA and OSHA standards, and how to comply with what they often perceive as onerous and arbitrary standards.

We sometimes even point out violations of OSHA regulations for our clients before the OSHA compliance officer shows up and spots the problem. The service has proven to be more and more valuable for our clients.

So I would like to ask your indulgence for a moment here to illustrate how this works. I would like to cite an interesting example of just what kind of impact OSHA compliance had on an employer, how this has changed this employer's attitude toward injury prevention and forced an arbitrary reallocation of what I consider to be pretty valuable resources.

This central Minnesota employer operates a very successful construction company. His company is successful in part because it operates very safely. Even though he employs over 100 construction workers, he seldom reports serious injuries. The injuries that he does report are usually minor ones and result in very little lost time.

Now, since this employer is self-insured for workers' compensation, both he and his employees fully realize that the money they do not spend paying workers' compensation benefits accrue directly to their own profits.

He has learned, as clearly demonstrated, that a safe job site is a profitable job site because safety is good for business.

Despite a sterling safety record and an active safety effort, a MNOSHA compliance officer visited one of his job sites without prior notice not long ago. During the inspection the compliance officer found an extension cord whose ground prong was missing and there was one other minor violation.

The compliance officer proposed a penalty of \$2,500 for these two violations.

OSHA gave the employer no chance to abate the violation prior to citation. The employer fought the citation, saw some reduction in his cost.

The employer quickly realized the next violation of this nature could result in a doubling of the fine. That is the way the repeat violations work. He remembered the dozens of extension cords that he owned, and he made a decision. Before I tell you what that decision was, let me give you some background on this thing.

Before this happened, we visited his job sites to consult with his supervisors and employees on what were the best and safest ways to perform some of the more dangerous construction tasks. We emphasized procedural safety and worked toward making each employee individually responsible for his or her own safety.

This approach is very successful, as their safety records showed. To reinforce this approach, the employer established and maintained a meaningful monetary incentive program for his employees with good safety records.

Regulatory compliance was definitely a secondary issue. We encouraged this course of action because it had the backing of both management and employees, but most importantly it worked. It prevented injuries.

Our client has recently asked us to radically change our emphasis during our visits. He now wants us to inspect his job sites primarily to make sure that no OSHA violations can be found. Those that we do find, he wants us to inform him of immediately, by fax if possible.

Now, while he is still concerned about preventing injuries, he realizes that OSHA poses a larger monetary liability to his business than does the cost of workplace injuries to his employees.

In other words, he sees OSHA compliance as a significant threat to his corporate health and well-being.

His safety record bears him out. He has paid out more to OSHA in the past 12 months in one fine than he has paid out in injury-related costs during the same period. The OSHA fines that could result from another minor infraction could wipe out the profit margin on a construction job valued at \$1 million.

This is not an isolated incident, Mr. Chairman. We see that the net purpose of OSHA compliance to date is usually not injury prevention. Instead, it has become compliance for the sake of compliance alone. Under the current interpretation of OSHA, there is regulatory compliance without any real connection to the true purpose of workplace safety regulations which is injury prevention.

Clearly, there must be a remedy to this situation that will allow this employer and others like him to continue to protect the health

and safety of his employees, comply with the appropriate regulations, and still make a reasonable profit.

He knows from personal, real world experience what many regulators have yet to discover: Injuries are usually a result of an individual employee making a decision, either consciously or unconsciously, to put himself or herself in harm's way.

Repeated studies show that unsafe acts by employees, their co-workers, supervisors or even management are the root cause of all workplace injuries. Very seldom are workplace conditions the cause of the injury. After all, workplace conditions are what OSHA normally tries to address.

Only recently has OSHA begun to recognize this fact and begun to formulate regulations to address these issues and these realities.

The proposed Federal OSHA reform bill comes as a breath of fresh air to the community of safety professionals across the Nation, not just here in Minnesota. If passed in its entirety, it will undoubtedly constitute the most significant and logical reform of OSHA since its inception.

Safety professionals may return to do what they're doing best: preventing injuries. Employers can concentrate on the business with minimal interruptions. Maybe even an employee can look forward to a longer, more injury-free working environment as a result of safer and healthier workplaces.

I invite any questions.

[The prepared statement of Mr. Volker follows:]

OSHA REFORM -- A SAFETY PROFESSIONAL'S PERSPECTIVE

by

David R. Volker

I am David R. Volker, Loss Control Manager of Berkley Administrators. My company is a third party administrator of self funded insurance programs here in Minnesota. We also have similar operations in several other states. We perform services for our clients similar to an insurance company by handling claims, performing payroll audits and providing loss control services, but we bear none of the risk of loss as an insurance company usually does. We administer self funded insurance programs for a wide variety of employers.

I am appearing here today at the request of the Minnesota and National School Boards Association. A very successful self funded workers' compensation program that we have administered for the Minnesota School Boards Association since 1979 has almost every school district in the state as a member. In the past 16 years, our safety and loss control services, along with responsible and competent claims handling that we provide to our client school districts have led to a lower than average rate of employee injury and illness than would be expected nationally. Injuries, when they did happen, resulted in lower cost claims.

My staff of 13 full time safety professionals and I also provide workplace injury prevention consultative services to most of the Municipalities in the state, many of the largest private health care providers, and a select group of private self insured employers. Through a contract with the Minnesota Assigned Risk Plan for Workers Compensation we provide consultative loss control services to our largest group of clients; over 20,000 small and medium sized businesses all across Minnesota. During the past 5 years we have visited over 10,000 work places statewide to help our client employers prevent injuries and illnesses among their employees.

It is not by coincidence that our client employers often ask us to help them research, interpret and apply OSHA regulations. We are perceived by our clients as an alternative, less threatening source of reliable information about OSHA and how to comply with what they often perceive are onerous and arbitrary standards. We sometimes act as a buffer between the OSHA compliance officer and our client to the benefit of both the employer and the employee. In some cases, we can point out violations of OSHA regulation for our clients before an OSHA

compliance officer spots the problem during a compliance audit. This service is proving to be more and more valuable to our clients as OSHA's authority to fine employers increases.

I ask the chair's indulgence to illustrate how this works. I wish to cite an interesting example of just what kind of impact OSHA compliance had on an employer, how this has changed this employer's attitude toward injury prevention and forced an arbitrary reallocation of valuable resources.

This central Minnesota employer operates a very successful construction company. His company is successful in part, because it operates very safely. Even though he employs over 100 construction workers he seldom reports more than one or two injuries a year. These are usually minor injuries that result in very little lost work time. Since this employer is self insured for workers' compensation, both he and his employees fully realize that the money that they do not spend paying workers' compensation benefits accrues directly to their profits. This employer has established an active and effective safety program that involves every level of supervision and management to make sure that every injury that can be prevented is prevented. He has learned and clearly demonstrated that a safe job site is a profitable one. Safety is good for business.

Despite a sterling safety record and an active safety effort, a MNOSHA compliance officer visited one of his jobs without prior notice. During the inspection the compliance officer found an extension cord whose ground prong was missing. The compliance officer proposed a penalty of \$1000 for this relatively minor violation of OSHA regulation. OSHA gave the employer no chance to abate the violation prior to the citation. The employer fought the citation and saw some reduction in the cost.

The employer quickly realized that the next violation of this nature could result in a doubling of the fine. He remembered the dozens of extension cords he owned, and made a decision.

Before this happened, we visited his job sites to consult with his supervisors and employees on what the best and safest way might be to perform some of the more dangerous construction tasks. We emphasized procedural safety and worked together toward making each employee individually responsible for preventing injuries. This approach was very successful, as their safety record showed. To

reinforce this approach, the employer established and maintained a meaningful monetary incentive program for his employees with good safety records. Regulatory compliance was definitely a secondary issue. We encouraged this course of action because it had the backing of both management and employees. Most importantly, it really worked to prevent injuries.

Our client has recently asked us to change our emphasis during our visits. He now wants us to inspect his job sites primarily to make sure that there are no OSHA violations to be found. Those that we do find he wants to be informed of immediately so that he can correct them without delay.

While he is still concerned about preventing injuries he realizes that OSHA poses a larger monetary liability to his business than do the cost of work place injuries to his employees. In other words, he sees OSHA compliance as a significant threat to his corporate health and well being. His safety record bears him out. He has paid out more to OSHA in the past 20 months in one fine than he has paid out in injury related costs during the same period. The OSHA fines that could result from a minor infraction could wipe out the profit margin on a construction job valued at a million dollars.

We observe that this is not an isolated incident. The net purpose of OSHA compliance today is usually not injury prevention. Instead, it has become compliance for the sake of compliance alone. Under the current interpretation of OSHA there is regulatory compliance without any real connection to the real purpose of workplace safety regulations, injury prevention.

Clearly, there must be a remedy to this situation that will allow this employer and others like him to continue protect the health and safety of his employees, comply with appropriate regulations, and still make a reasonable profit. He knows from personal, real world experience what many regulators have yet to discover; **injuries are usually the result of an individual employee making a decision, either consciously or unconsciously, to put him or herself into harm's way.** Repeated studies show that unsafe acts by employees, their coworkers, supervisors or management are the root cause of almost all workplace injuries. Very seldom are workplace conditions the cause of an injury. Only recently has OSHA begun to recognize this fact and begun to formulate regulations to address its realities.

The proposed Federal OSHA reform bill comes as a breath of fresh air to the community of Safety Professionals across the Nation. If passed in its entirety, it will undoubtedly constitute the most significant and logical reform of OSHA since its inception. It may open the door that allows employers to begin to emphasize injury prevention, not just regulation compliance. It may allow a partnership to be forged between employers, safety professionals, and regulators. A less adversarial and more cooperative regulatory climate may result. In the long run, all of us may benefit:

Safety professionals may return to doing what they are best at; preventing injuries.

Employers can concentrate on the business of business, with minimal interruption from arbitrary and capricious regulation.

Employees can look forward to longer and more injury free working lives as a result of safer, healthier work places.

The End.

Mr. MCINTOSH. Thank you very much, Mr. Volker.

Let us now proceed to questioning with this part of the panel.

My first question for you, Mr. Adams, is: How well did it work when the county took over administering the general permit from the Corps of Engineers? Were their guidelines and materials specific enough that you could then go ahead and make the determinations?

Mr. ADAMS. Yes, they were very good. They had training sessions that were set up through our State Board of Water and Soil Resources prior to our administering the program.

Mr. MCINTOSH. Have those counties done that here in Minnesota?

Mr. ADAMS. No. This is a pilot program and there are only a number of local governments. It is not all counties. I believe there are some cities involved and some soil and water conservation districts.

Mr. MCINTOSH. Is the corps satisfied? Are they expressing enthusiasm about the pilot?

Mr. ADAMS. I think they're expressing enthusiasm. I think it is a little early yet to judge how well it is working because it is a relatively new program.

Mr. MCINTOSH. Thank you.

Mr. Volker, I was fascinated by your testimony and the difference in the emphasis there, and have found that employers who are serious about safety often go in very different directions than OSHA.

One of the questions I wanted to ask you since you seem to be very close to this area and on top of it on a day-to-day basis, have you noticed in either the last 6 months or 18 months a change in emphasis among the OSHA officials who are operating out in the field, or is it the same type of inspection behavior that you described with the extension cord?

Mr. VOLKER. Change comes slowly to any regulatory agency, particularly OSHA because of the nature of its process these many years. They are a regulatory enforcement agency.

There is a real separation between consultation and compliance in this State and elsewhere. The compliance officers are still compliance officers. They are not there to help you; they are there to enforce the law.

Employers can request help from the folks from consultation, but they usually have to stand in line for a long time because it is a very popular program.

Mr. MCINTOSH. I see. One of the reforms that is being discussed is to require that the agency offer consultation before they go after someone on enforcement.

Mr. VOLKER. Right.

Mr. MCINTOSH. And a chance to correct the problem which, to my mind, would really create huge incentives for the agency to focus in on real problems because they wouldn't see the potential for fines.

Obviously, people would go in and change their extension cords to avoid a large fine, so they're not going to bother with things like that unless there are serious problems.

But the reason I'm asking you that question is if you've seen any change in more recent times; Mr. Dear did tell us that he is changing the attitude, and he is trying to accomplish all of these things that we have been pushing them to do.

My experience from talking to people out in the field is that the message is not getting beyond his office in Washington.

Mr. VOLKER. That's correct. We are filtered through a State program here which is one bureaucratic step away from Federal OSHA. Federal OSHA is here in oversight capacity only.

Mr. MCINTOSH. At this point let's suspend the questioning and hear from the mayor's testimony if that is OK with both of my colleagues.

Our additional member of this panel is Mayor Morrie Lanning of Moorhead. Welcome to our proceedings. Let me ask you: Chairman Clinger of the full committee has asked us to swear in all witnesses. So if you could please rise and raise your right hand.

[Witness sworn.]

Mr. MCINTOSH. Mayor Lanning, welcome and thank you for coming today.

STATEMENT OF MORRIE LANNING, MAYOR, CITY OF MOORHEAD, MN

Mayor LANNING. Thank you. First of all, let me apologize for being late today. I got caught in the worst traffic jam I've ever seen on a rural section of I-94.

Mr. MCINTOSH. I wouldn't expect to see a traffic jam here.

Mayor LANNING. I've never seen anything like it in rural Minnesota.

I'm Morrie Lanning, mayor of the city of Moorhead, MN. Moorhead is a city of 33,000 people located in the northwestern border of Minnesota with North Dakota. We share a twin city status with Fargo, ND.

I appreciate this opportunity to testify on an issue of great concern in my community in many cities throughout the country, namely the urgent need for Federal regulatory reform.

Federal regulations are a fact of life, and in many cases serve necessary and useful purposes. However, throughout my 22 years in elected office I've witnessed an every increasing number of complex Federal regulations that are unnecessary, unfunded, unfounded, and problematic.

Let me briefly identify some examples of problematic Federal regulations which have effected our community. First, Federal regulations arising from the Safe Drinking Water Act caused the city to spend \$14.5 million to expand and renovate our water treatment facility, an expenditure which could have been delayed for possibly up to 20 years through more intensive water conservation efforts.

Nearly \$4 million of the \$14.5 million was incurred to meet new Federal water quality regulations. This expenditure which has had little if any effect on the quality of Moorhead's drinking water is a striking example of a mandate of not producing the desired effect.

Since 100 percent of the cost of these new and renovated facilities was borne by the city, in other words an unfunded mandate, water rates will soon be nearly doubled from the level of rates prior to the imposition of these regulations.

Second example, at exactly the same time as Moorhead was faced with enormous costs to comply with Federal water quality regulations which we have documented do not increase water quality in any appreciable or necessary way, another Federal agency, the U.S. Army Corps of Engineers, is allowed to discharge large quantities of poor water without having to meet any standards, causing Moorhead's water treatment costs to significantly increase.

Third example, in 1983, at the direction of and with financial assistance with Federal and State agencies, Moorhead constructed and opened a state-of-the-art innovative technology waste water treatment facility at a cost of over \$27 million.

Now, at the direction of Federal agencies, in order to comply with new and ever changing Federal regulations, Moorhead, with no financial assistance, has been required to construct a \$2 million sludge storage facility which by all accounts will not achieve any significant environmental benefit.

Furthermore, the city is threatened with the application of ammonia/nitrogen standards that would require the expenditure of another \$12 million to achieve compliance, and that too would double waste water rates.

Added to the problem is the fact that if we had proceeded with compliance, Moorhead would have spent \$12 million to meet the ammonia/nitrogen standard and would still be in violation of similar but not equal standards imposed by the State of North Dakota.

What is really the crowning blow about this unfunded Federal mandate of regulation is that technical experts have told us that no water quality improvement will be achieved by our compliance.

What is even more disturbing is that we have learned that the Federal regulation being imposed is based on outdated science, and that several cities and States throughout the country have been granted relief from this regulation. Why not Moorhead? Why not simply update this Federal regulation?

Fourth example, increasingly, we have found that Federal regulations open the door to frivolous litigation that ends up being very time consuming and costly for local units of government. As a recent example, well-intended ADA regulations have resulted in litigation that defies common sense or was unnecessary in order to resolve issues.

Another ADA compliance problem is the fact that visually impaired people object to wheelchair accessible curb cuts which make it very difficult for visually impaired people to walk the street. Here is a case where compliance could prompt litigation. Compliance.

Fifth example, public housing preference rules require that 9 of every 10 available units be filled by persons with preferences. With regard to elderly/disabled housing, most preference applicants are disabled significantly under the age of 62. This policy does not allow for local flexibility in meeting community needs, and is literally forcing seniors out of this housing option.

The final example I want to cite is Federal regulations governing mass transit require that all new and rehabilitated buses be wheelchair accessible at the cost of approximately \$20,000 per bus. In an area with adverse winter climate 9 out of 12 months, these wheel-

chair lifts are not usable by many. Wheelchair users can't get to the bus stop through the snow.

Local discretion would result in more cost effective and efficient service delivery.

I could go on with examples of unnecessary, unfunded, unfunded and problematic Federal regulations. But you can see why local officials are frustrated and upset. We are experiencing the double whammy of reduced and eliminated Federal funding on the one hand while Federal regulations are driving up our costs on the other hand.

What should be done about this situation? Let me suggest—

Mr. MCINTOSH. Go ahead and summarize, Mayor Lanning, and we can put the remainder of your testimony into the record.

Mayor LANNING. What I conclude here is nine principles that I think need to be put in place by the Federal Government in order to improve the situation for the imposition of regulations that affect local governments.

Mr. MCINTOSH. I will tell you what, Mayor Lanning, I will use my questioning time to ask you to read those nine principles for us.

Mayor LANNING. Thank you.

First, the Federal Government should conduct cost benefit assessments to determine if the cost of Federal regulations are commensurate with the benefits received, if any.

Second, outdated regulations and regulations that are not cost effective when weighed against the benefits received should be repealed.

Third, if new scientific data is found relative to a regulation, immediate efforts should be undertaken to update or repeal a standard or rule. Local units of government should not have to discover these things for themselves as we had to do.

Fourth, if a national interest is at stake and a Federal mandate is adopted, the Federal Government must provide substantial financial support in order to achieve compliance. There must be an end to unfunded mandates.

Fifth, Congress must provide vigorous oversight of Federal agencies imposing regulations emanating from Federal legislation. The rulemaking process must be brought under control.

Sixth, local governments need to be involved sooner and more significantly before regulations are imposed. It should also be noted that regulations which may make sense in one locale may not in another.

Seventh, the same rules and regulations that apply to other units of government should apply to the Federal Government and its agencies. Why not?

Eighth, local units of government should be given the flexibility to spend limited resources on what they believe to be the greatest problems. We should not be required to spend precious resources unnecessarily on issues of minor significance or issues with little benefit while major problems persist.

And finally, While I generally support the concept of block grants, the block grant of funds for States is no panacea for local units of government. We have found that State government is particularly adept at imposing even more strict standards than those

of the Federal Government without allocating the money to pay for them.

Adopting and implementing these principles will go a long way toward easing the burdens of Federal regulations on cities like ours. We desperately need the relief.

Thank you for your consideration.

Mr. MCINTOSH. Thank you, Mayor, and thank you for coming.

[The prepared statement of Mayor Lanning follows:]

Mr. Chair, Members of the Sub-Committee and Friends:

I am Morrie Lanning, Mayor of the City of Moorhead, Minnesota. Moorhead is a city of 33,000 located in Northwestern Minnesota on the border with the state of North Dakota and shares a twin city status with Fargo, North Dakota.

I appreciate this opportunity to testify on an issue of great concern to my community and many cities throughout the country, namely the urgent need for federal regulatory reform. Federal regulations are a fact of life and in many cases serve necessary and useful purposes. However, throughout my 22 years in elected office, I have witnessed ever increasing numbers of complex federal regulations that are unnecessary, unfunded, unfunded and problematic.

Let me briefly identify some examples of problematic federal regulations which have affected Moorhead:

1. Federal regulations arising from the Safe Drinking Water Act caused the City to spend \$14.5 million dollars to expand and renovate our water treatment facility, an expenditure which could have been delayed for possibly up to 20 years through more intensive water conservation efforts. Nearly \$4 million dollars of the \$14.5 million was incurred to meet new federal water quality regulations. This expenditure which has had little if any effect on the quality of Moorhead's drinking water, is a striking example of a mandate not producing the desired effect. Since 100% of the cost of these new and renovated facilities was borne by the City, in other words an unfunded mandate, water rates will soon be doubled from the level of rates prior to the imposition of these federal regulations.
2. At exactly the same time as Moorhead is faced with enormous costs to comply with federal water quality regulations, which we have documented do not increase water quality in any appreciable or necessary way, another federal agency, the United States Army Corps of Engineers is allowed to discharge large quantities of poor quality water without having to meet any standards, causing Moorhead's water treatment costs to significantly increase.
3. In 1983, at the direction of and with financial assistance from federal and state agencies, Moorhead constructed and opened a state-of-the-art "innovative technology" wastewater treatment facility at a total cost of over \$27 million dollars. Now, at the direction of federal agencies, in order to comply with new and ever changing federal regulations, Moorhead with no financial assistance has been required to construct a \$2 million dollar sludge storage facility, which by all accounts will not achieve any significant environmental benefit. Furthermore, the City is threatened with the application of ammonia/nitrogen standards that would require the expenditure of another \$12 million dollars to achieve compliance and

double wastewater rates. Added to the problem is the fact that if we had proceeded with compliance, Moorhead would have spent \$12 million dollars to meet the ammonia/nitrogen standard and still be in violation of similar but not equal standards imposed by the State of North Dakota. What really is the crowning blow about this unfounded federal regulation is that technical experts have told us that no water quality improvement will be achieved by our compliance. What is even more disturbing is that we have learned the federal regulation being imposed is based upon outdated science and that several cities and states throughout the country have been granted relief from this regulation. Why not Moorhead, why not simply update this federal regulation?

4. Increasingly, we have found that federal regulations open the door to frivolous litigation that ends up being very time consuming and costly for local units of government. As a recent example, well-intended ADA regulations have resulted in litigation that defies common sense or was unnecessary in order to resolve issues. Another ADA compliance problem is the fact that visually impaired people object to wheelchair accessible curb cuts which make it very difficult for visually impaired people to walk the street. Here is a case where compliance could prompt litigation.
5. Public housing preference rules require that 9 of every 10 available units be filled by persons with preferences. With regard to elderly/disabled housing, most preference applicants are disabled, significantly under the age of 62. This policy does not allow for local flexibility in meeting community needs and is literally forcing senior citizens out of this housing option.
6. Federal regulations governing mass transit require that all new and rehabilitated buses be wheelchair accessible, at a cost of approximately \$20,000 per bus. In an area with adverse winter climate 9 out of 12 months, these wheelchair lifts are not usable by many. Wheelchair users can't get to the bus stop through the snow. Local discretion would result in more cost effective and efficient service delivery.

I could go on with examples of unnecessary, unfunded, unfounded or problematic federal regulations, but you can see why local officials are frustrated and upset. We are experiencing the double whammy of reduced and eliminated federal funding on the one hand, while federal regulations are driving up our costs on the other hand.

What should be done about this situation? Let me suggest some principles which should guide the federal/local relationship relative to regulations.

1. The federal government should conduct cost/benefit assessments to determine if the costs of federal regulations are commensurate with the benefits received, if any.
2. Outdated regulations and regulations that are not cost effective when weighed against benefits received should be repealed.
3. If new scientific data is found relative to a regulation, immediate efforts should be undertaken to update or repeal a standard or rule. Local units of government should not have to discover these things for themselves as we had to do.
4. If a national interest is at stake and a federal mandate is adopted, the federal government must provide substantial financial support in order to achieve compliance. There must be an end to unfunded mandates.
5. Congress must provide vigorous oversight of federal agencies imposing regulations emanating from federal legislation. The rulemaking process must be brought under control.
6. Local governments need to be involved sooner and more significantly before regulations are imposed. It should also be noted that regulations which may make sense in one locale may not in another.
7. The same rules and regulations that apply to other units of government should apply to the federal government and its agencies.
8. Local units of government should be given the flexibility to spend limited resources on what they believe to be the greatest problems. We should not be required to spend precious resources unnecessarily on issues of minor significance or issues with little benefit while major problems persist.
9. While I generally support the concept of "block grants", the "block grant" of funds to states is no panacea for local units of government. We have found that state government is particularly adept at imposing even more strict standards than those of the federal government without allocating the money to pay for them.

Adopting and implementing these principles would go a long way towards easing the burdens of federal regulations. We desperately need relief. Thank you for your consideration!

Morrie Lanning
Mayor of Moorhead, Minnesota
August 7, 1995

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Mr. MCINTOSH. In the interest of making sure we get to all the panelists, I have no further questions.

Mr. Peterson.

Mr. PETERSON. Thank you, Mr. Chairman.

I want to thank the mayor for his testimony. He has done a good job of summarizing what we're trying to do, and I think your nine points—I would have to say that a good portion of those nine points have been dealt with positively in the House. The problem is they haven't been dealt with positively with the Senate yet, so you folks need to visit with your Senators about this.

On this waste water treatment issue, we have visited about this before. I want to clear this up. Apparently, they picked the time to do this test when the river was at a low level; isn't that correct? They kind of picked a time that was not normal? Is that how we got into this situation in the first place, or am I wrong about that?

Mayor LANNING. How we got into the situation in the first place is that our permit had expired and was up for renewal. We felt that there was not documented evidence to indicate that there was a problem that we needed to address.

So we asked the State and Federal officials to conduct the necessary tests and study to determine whether or not there was a problem. What they chose to do is study the problem only downstream from our effluent discharge and only during low flow periods.

We believe that this is very incomplete in terms of analyzing the problem. We have no idea as to the extent of the ammonia nitrogen that is coming in to the river upstream from our discharge point.

We have to also consider not only local but other flow conditions in order to properly determine compliance with this standard.

But this standard, Congressman, is wrong, and we have scientific proof that it is wrong. And we should not be required to spend large sums of money on a standard that is out of date based on out-of-date science, as this one is.

Mr. PETERSON. Wasn't the biggest problem with this on catfish or something like that? Is that what this was?

Mayor LANNING. Well, the concern was the impact was on fish population. We have no documented fish kill as a result of—even during the most severe flow periods.

Mr. PETERSON. They are actually thriving, aren't they? That's what I've heard.

Mayor LANNING. They are. People come from other States to fish the river.

Mr. PETERSON. The chairman and I were just visiting—you know, we dealt with the city of San Diego problem, on Corrections Day. Maybe now that we've set some precedence on fixing specific city's problems, maybe there is a way we can make this for Corrections Day and get you some relief. We'll take it under advisement here.

Mayor LANNING. Thank you.

Mr. PETERSON. Mr. Adams, on this wetlands process, is this for all of Stearns County?

Mr. ADAMS. Yes.

Mr. PETERSON. And is the NRCS or whatever the office is called out here involved in this as well?

Mr. ADAMS. No; we're talking about the State wetlands project.
Mr. PETERSON. That was my question: So you are not including the Federal wetlands?

Mr. ADAMS. We're only administering the core program that would affect three acres or less.

Mr. PETERSON. So we still haven't gotten to one situation?

Mr. ADAMS. Things like Swamp Buster, no, those are not administered.

Mr. PETERSON. Do you think it is feasible that we can ever get to some point where one agency—where people that want to deal with wetlands only had to go one place?

Mr. ADAMS. I think on that issue the State of Minnesota is correctly studying the whole wetlands regulatory program. I believe it is the Department of Natural Resources that has a committee and has had a committee for the past couple of years. I think that they're going to get there.

I guess from my standpoint we're finding that people have a very difficult time with the bureaucracy. As you stated there are many, many agencies that are involved in wetlands. It would be nice to have a focal point.

Mr. PETERSON. We're at the Federal level. One thing we're trying to do, Dave Minge and I and others, is to try to, at the Federal level, get to one agency making the determination. I don't know if we're going to get there or not. There is an awful lot of resistance and an awful lot of misinformation being put out by different groups, but we're going to do.

Under this mitigation situation, this may be out of your purview, but just wondered if you were aware: I've heard that people in the Twin Cities were mitigating wetlands in Becker County. Apparently, there is no rule against that. I was told. So you have to put two acres back for every acre that you pave over or whatever. They've been coming way out-of-state and getting the mitigation.

Is that kind of thing going on in Stearns County that you're aware of? Are they coming up out of the cities and mitigating in this county? Are you mitigating in other areas?

Mr. VOLKER. We did under the interim program. Under the permanent rules, the State program can't do that any longer. It would be right here in Stearns County. But that is true. Stearns County has a site, I believe, near Big Stone where we are doing that. Under the interim rules that is permissible.

Mr. PETERSON. Mr. Chairman, if I could just break the rule here for 1 second. I had a long discussion with Mr. Dear from OSHA. Do you operate in other States?

Mr. VOLKER. Yes, we do.

Mr. PETERSON. He told me—and the chairman kind of alluded to this—he has a systematic program to change the mentality of OSHA from a compliance to a more on what you're talking about. He says he has done it in five or six offices. I think one he mentioned was New Jersey and whatever. And it is going to take 1½ years or 2 years for him to get it done because he can only do so many at a time. He says he literally has to go out there himself and lay the hammer down to get things to change.

Is this going on? Do you know about this?

Mr. VOLKER. There is a Federal program at the State level here in Minnesota. I have yet to see the effect of it in other States. We do not provide services to the other States that Mr. Dear is working on right now, but we will soon.

Mr. PETERSON. But you are aware of what he's doing?

Mr. VOLKER. Yes, I try to keep up with it.

Mr. PETERSON. But it is not happening in any of your areas?

Mr. VOLKER. Not right here. In Minnesota—Minnesota has its own parallel program overseen by the Feds.

Mr. PETERSON. Thank you, Mr. Chairman.

Mr. MCINTOSH. Thank you, Mr. Peterson.

Mr. PETERSON. I thank all the witnesses for their testimony.

Mr. MCINTOSH. Maybe one thing to do would be to privatize some of those functions and having groups like Mr. Volker where there isn't a safety record to be concerned about carry on some of the functions.

Mr. Gutknecht.

Mr. GUTKNECHT. Yes; thank you, Mr. Chairman.

I would first, in response to Mr. Adams: I am familiar with the flow control problem, but I must say there is more than one side to this story.

I visited with Chairman Bliley of the Commerce Committee on several occasions. He has assured me, though, those counties and those communities who have invested in capital projects, whether they be waste energy facilities whatever, that their bonds would be protected.

On the other hand I have to tell you that his perspective is this: That we should not be in the business of forcing consumers to pay \$75 to get rid of—per ton of waste when market forces may be able to achieve the same thing for \$25 per ton.

That isn't the official House position, but I think you need to know there is some honest debate going on.

Mr. ADAMS. I don't think that we disagree with that at all. However, we are in the situation that we're in. We made those decisions years ago, and it is essential that something could be done.

Mr. GUTKNECHT. I think those counties and communities have made that kind of commitment. I think they're going to be protected. I do have that assurance from the chairman. But he said we are not going to be in the business of guaranteeing again, \$50 solutions to \$20 problems.

Mr. ADAMS. Do you have any idea when that action will be forthcoming?

Mr. GUTKNECHT. It is my sense that it will happen yet this year. But I will continue to pursue it. I have a particular interest because of Olmstead County.

Mr. ADAMS. Thank you.

Mr. GUTKNECHT. Mr. Volker, I want to thank you. Your testimony was excellent. In fact, I think all the testimony has been excellent. Particularly, I think you did a good job articulating the problem we have had. We have had assurances from the top people at OSHA that this was going to happen.

But I must tell you that some of the other people that have testified from OSHA take a somewhat different view. As a matter of fact, there is one young lady who testified before us, and I asked

her specifically what she thought the American people expected from OSHA. Her answer was that she thought the American people wanted more efficient and effective regulation.

In my view that was an attitude—that wasn't the answer I wanted to hear. I suggested I think what the American people wanted was more reasonable regulation.

What we seen and heard so much of from small employers particularly is this game of "gotcha" that is being played. It is not about making the workplace all that much safer; it is about almost filling—getting more scalps up on the wall or more fines being levied.

We are going to continue to press this one. I think there is a general feeling in the Congress that the pendulum has gone too far and it has to come back to the center for the benefit of the small business people in particular.

Finally, I would like to say to the mayor I'm glad you made it through the traffic jam because I think the nine points that you illustrated, the nine recommendations or principles, really do lay the cornerstones for the kind of regulatory reform that we're talking about.

Just to pursue what Congressman Peterson said: I think we're moving ahead at relatively quick speed by Washington standards in the House on some of those things. It is moving although little more slowly in the Senate. If you can put a little pressure on our two U.S. Senators from Minnesota we would appreciate that.

But we thank you for coming and we thank you for your testimony today.

Mr. MCINTOSH. Thank you all for coming. I appreciate it. And we will include any other written remarks you would like to submit into the official record for today's proceeding.

Thanks very much.

Let's move on now to our third and final full panel for the hearing, and then as soon as this is over we will open it up to an open microphone session for anyone else who would like to make comments within the allotted time.

As the panelists come forward, our next panel is several people who have been dealing with health care delivery services. And we will discuss some of the problems that regulations cause in making our health care even more expensive.

Gentleman, if I could ask all of you to please rise and raise your right hand.

[Witnesses sworn.]

Mr. MCINTOSH. Our first witness is Dr. Peter Larsen with the St. Cloud Eye Clinic.

Dr. Larsen, thank you and welcome.

STATEMENTS OF DR. PETER LARSEN, F.A.C.S., ST. CLOUD EYE CLINIC; JOHN SOLHEIM, CEO, ST. MARY'S REGIONAL HEALTH CENTER; AND ED ZAPP, PRESIDENT, ZAPPCO, INC.

Dr. LARSEN. Thank you very much. I know the hour is getting late and I will try to keep this brief.

I certainly appreciate your remarks at dinner and I certainly appreciate people in Washington speaking our language. Thank you so much.

Mr. MCINTOSH. Thank you.

Dr. LARSEN. In recent years the field of medicine has been increasingly burdened by government regulation. Unfortunately, this has not necessarily resulted in better medical care for you and your family.

There are so many things to touch on in 5 minutes. I can't do what Bill Clinton didn't do in 100 days. But I will touch on just a couple of things that tend to be concerns for us in the medical field.

Federally funded peer review by the peer review organization which is abbreviated PRO was mandated by Federal law in 1983. On the surface this appears to be a noble cause, but in actual practice the PRO does not appear to increase quality of care and places an unneeded regulatory burden on health care providers.

A scholarly article which appeared in March of this year in the Journal of Florida Medical Association reviewed patient mortality in a large 988 bed community hospital prior to implementation of PRO activities and compared this to mortality figures after the PRO was in place.

The results showed no significant improvement in patient outcome in a regulated environment, and certainly in this cost conscious time in which we live it doesn't seem like that is very good use of our health care dollars.

Our experience in central Minnesota would suggest the ineffectiveness and unnecessary nature of the PRO activities as well. I am personally aware of dozens of cases where the PRO in our State contacted physicians regarding alleged deficiencies in care provided, but on review it was actually the PRO that was misinformed, not up to speed, inadequately educated, and in fact in some cases they went on record as advocating clearly unnecessary, costly tests prior to local anesthetic surgery.

In trying to talk to the reviewers at the PRO we were told that for objectivity reasons their anonymity had to be protected. We have certified letters from them but there really is no one we can talk to. The PRO here in Minnesota is located in Bloomington and the medical director is Thomas Quick. He is a family practitioner and really is not trained in a lot of specialty matters.

Another thing that has us concerned is the attitude taken by the U.S. Department of Justice in its increasingly aggressive effort in trying to combat alleged fraud and abuse in the federally funded health care programs including Medicare and Medicaid.

While dishonesty in these programs must be addressed, the present attitude of the Justice Department in many cases is misguided and appears to violate the constitutional rights of many of the parties under investigation.

At a recent conference I attended, there were numerous instances around the country where armed government agents arrived unannounced at various clinics, seized records, took property, personal items, and disrupted the delivery of the health care at that office.

The attorney speaking was a Mr. Allan Reider who is out of Washington with the Arent Fox law firm. And it seems like it is more of a "gotcha" game just like Mr. Gutknecht was referring to.

Along these same lines, appearing in yesterday's St. Cloud Times paper was an article about a drug ALG which was started at the University of Minnesota by Dr. John Najarian. It appeared certainly from the article that officials in the FDA and Justice Department are more interested in career advancement through regulatory enforcement than providing a better environment for patients and physicians for your family and mine and people in need of these medications.

It was particularly interesting that the ALG, which is a drug used for prevention of rejection in organ transplant is actually more necessary in children and in blacks because they have slightly different immune systems.

And this ALG has been taken off the market in spite of being used with the knowledge of both the university and the FDA for several years. It is unclear which department in government prompted the recent withdrawal of the medication and why it was done, but many people have suffered as a result.

Around the country doctors are afraid to speak out against the FDA. And I feel some intimidation even making these comments because of possible recrimination against those of us who point out these things that are going on. And I don't think that a lot of us on the street are really aware of the Gestapo tactics that are being used.

So at a time when our health care delivery is more sophisticated and more complex than ever, we really do not need inappropriate government interference in the delivery of this health care.

Thank you.

[The prepared statement of Mr. Larsen follows:]

St. Cloud Eye Clinic

Ophthalmology and Ophthalmic Surgery

Peter A. Larsen, M.D., F.A.C.S.

Steven W. Rice, M.D., F.A.C.S.

Diplomates American Board of Ophthalmology

August 3, 1995

In recent years the field of medicine has become increasingly burdened by government regulation. In an attempt to control costs and monitor quality of care, government programs have been mandated and funded.

Federally funded peer review by the Peer Review Organization (PRO) was mandated by federal law in 1983. On the surface this may appear to be a noble cause, but in actual practice the PRO does not appear to increase quality of care and places an unneeded regulatory burden on health care providers. A scholarly article appearing in the Journal of the Florida Medical Association in March of 1995 reviewed patient mortality at a 988 bed community hospital prior to the implementation of the PRO activities and compared this to the mortality figures after PRO was in place. The results showed no significant improvement in patient outcome in the regulated environment.

Our experience in central Minnesota would also suggest the ineffectiveness and unnecessary nature of PRO review activities. I am aware of dozens of cases where the PRO in our state has contacted physicians regarding alleged deficiencies in care provided but on review of these cases it is the PRO that is misinformed, inadequately educated, and in fact have gone on record advocating unnecessary pre-operative testing. In trying to talk with the reviewers at the PRO we are told that the anonymity of the reviewers must be maintained for objectivity reasons. The PRO in Minnesota is the Foundation for Health Care Evaluation located at 2901 Metro Drive, Suite 400 Bloomington, Minnesota 55425, phone number (612) 854-3306 and the medical director is Thomas Quick, M.D.

St. Cloud Eye Clinic

Ophthalmology and Ophthalmic Surgery

Peter A. Larsen, M.D., F.A.C.S.
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The U.S. Department of Justice has been increasingly aggressive in trying to combat alleged fraud and abuse in the federally-funded health care programs including Medicare and Medicaid. While dishonesty in these programs must be addressed, the present attitude of the Justice Department in many cases is misguided and also violates the Constitutional rights of the parties under investigation. Numerous instances around the country have occurred where armed government agents arrive unannounced at a clinic and seize records, property, personal items, and disrupt the delivery of health care. Mr. Allan Reider with the law firm of Arent, Fox, Kinter, Plotkin, and Kahn in Washington D.C. has numerous cases of this type of government activity. Mr. Reider can be reached at the Arent, Fox Law Firm at 1050 Connecticut Avenue Northwest, Washington D.C. 20036-5339, phone (202) 857-6000.

At a time when health care delivery is more sophisticated and complex than ever we do not need inappropriate government interference in the delivery of this health care and we must examine the cost effectiveness of present wasteful government activities.

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Whither the PRO?

Analysis of the Effectiveness of Three Medicare Peer Review Organizations in a Florida Hospital

ABSTRACT: *The objective of this retrospective study was to evaluate the effectiveness of a peer review organization (PRO) on patient mortality rate in a not-for-profit, 988-bed community hospital in Florida. The number of deaths per hospital discharge (mortality) was compared prior to the Professional Foundation for Health Care (PFHC) holding the contract as the Medicare PRO (1983), during two years in which the PRO was fully active (1990 and 1991), during the year limited PRO activities were conducted (1992), and when PRO activities were again fully expanded (1993).*

All Medicare hospital discharges, including deaths, were included from January through May during 1983, 1990 through 1993. There was no intervention.

Patient mortality as a determinant of PRO effectiveness was evaluated prior to the PRO, during a portion of the years the PFHC held the contract as the Medicare PRO, and an identical time period one year later with limited PRO review and again the following year when full reviews returned. The number of deaths did not change significantly. Mandated peer reviews of care to inpatient hospital Medicare beneficiaries did not significantly improve health care as measured by mortality.

Federally-funded peer review by the Peer Review Organization (PRO) was mandated by federal law in 1983 at the time the diagnosis related groups form of reimbursement was instituted. The purpose was to assure adequate medical care to Medicare beneficiaries.¹ Little information is available to determine the extent to which the PRO actually influenced care. Moreover, available information is somewhat contradictory. Most studies look at isolated areas of care and do not review overall outcome such as mortality.²⁻⁶

Florida presents a unique opportunity to evaluate the effectiveness of the PRO. The Professional Foundation for Health Care (PFHC) reviewed all cases according to its "Scope of Work" from 1983 until May 1991. At that time due to concerns of the Health Care Financing Administration (and subsequent legal action) the contract with the PFHC was terminated.⁸ Subsequently during 1992 only limited review was performed by Blue Cross/Blue Shield of Florida, Inc., until a new contract was awarded to Florida Medical Quality Assurance, Inc. (FMQA).⁷

From January through May 1992 Blue Cross/Blue Shield conducted only limited reviews of charts. It was asked to perform this function under provision of law upon closure of the PFHC and until the government could effect a permanent contract through the competitive request-for-proposal process. The Blue Cross/Blue Shield PRO conducted these activities: Section 1867 (antidumping) cases; reviews of potential cardiac catheterization facilities; and beneficiary quality complaint reviews. Also performed were customer service-related functions including written and telephone inquiries.⁷

During the period January through May 1993, the more expanded, full scope of the PRO was resumed. The contract was awarded on June 21, 1993, to FMQA, an affiliate of Alabama Quality Assurance Foundation. The Third Scope of Work was then instituted. This included random sample of beneficiaries for day outlier, cost outlier, readmission, transfers, intervening care, specialty hospital; optional focused review; other samplings including hospital DRG adjust request, preadmit, preprocedure review, hospital notices, beneficiary complaints, external referral from HCFA regional offices etc.; sampling of ambulatory surgery, freestanding cardiac catheterization facilities; review process of tech-

Table 1.—Mortality Rates

Time Period January-May	Total Discharges	Deaths	Mortality Rate
1983	5,476	309	.05643
1990	6,215	336	.05406
1991	6,198	315	.05090
1992	6,198	326	.04941
1993	6,115	345	.05640

nical denials, documentation review, notices/correspondence, opportunity for discussion, pended quality level 1 cases, intensified review, reconsiderations and rereviews, quality review process, QIP intervention thresholds, analysis of review results, and sanctions.⁴

The unique situation in Florida presented an opportunity to evaluate mortality in our 988-bed community hospital during four periods: prior to the PRO, during full review by the PFHC, during the less intense and limited interim review by Blue Cross/Blue Shield and during the return to full review under the new contract with FMQA.

Mortality was evaluated as the number of deaths per discharges. We chose the months January through May of each year since this was the extent of time during 1992 when only limited review was performed. Baseline mortality was evaluated from January through May 1983 prior to the PRO. Mortality was analyzed during January through May 1990 and 1991 since these were comparable periods during which PFHC conducted full peer review. Mortality was also analyzed January through May 1993 when full review was again conducted according to the new contract with FMQA.

Statistical analysis • Statistical analyses were performed utilizing chi-square analysis.

Results • Mortality rates are summarized in Table 1. From January through May 1983, there were 5,476 discharges and 309 were classified as expirations. This resulted in a mortality rate of .056.

From January 1 until May 31, 1990, there were 6,215 discharges and 336 were classified as expirations. This resulted in a mortality to discharge ratio of .054.

During the same five months of 1991 the number of discharges was 6,188. This period had 315 expirations resulting in a mortality to discharge ratio of .051. The years 1990 and 1991 represent the time period in which the PRO was conducting full PRO review.

In the same five months of 1992 there were 6,598 and 326 expirations resulting in a mortality to discharge ratio of .049. During this time only limited review was conducted as previously described.

Table 2.—Comparison of Various Levels of PRO Involvement on Mortality

Years of Review	Level of Review	Mortality Rate	Significance (P Value)
1983 vs 1990	None vs Full	.056 vs .054	0.58
1983 vs 1991	None vs Full	.056 vs .052	0.19
1983 vs 1992	None vs Limited	.056 vs .049	0.09
1983 vs 1993	None vs Full	.056 vs .050	0.14
1992 vs 1990	Limited vs Full	.049 vs .054	0.23
1992 vs 1991	Limited vs Full	.049 vs .051	0.70
1992 vs 1993	Limited vs Full	.049 vs .050	0.79

There were no statistically significant differences ($p > .05$) in the mortality rates when the period prior to the PRO (1983) is compared to the period when the PRO was active and fully reviewing charts, (1990 and 1991) and also when compared to the full review (1993) (Table 2). Similarly no significant difference was found when the limited review (1992) was compared to the time period prior to the PRO (1983), full review by PFHC (1990 and 1991), or the return to full review by FMQA (1993).

Discussion • This analysis indicates that in multiple periods of time mortality was not affected by either the presence of review, level of review, or the organization reviewing by contract with the Health Care Financing Administration. There are several potential explanations.

A number of quality assurance endeavors were already in place including mandatory continuing education for all health-care professionals (including AIDS and legal medicine), unannounced state inspections, and detailed scheduled inspections by the Joint Commission on Accreditation of Healthcare Organizations.⁹ Another quality control measure may have been redundant with regard to improving patient mortality.

Historically the assessment of quality care was measured by indicators that looked at adverse events or the immediate impact of a procedure on the patient's health. It may be that other more subtle measurements of improvement of patient care, e.g., performance status of patient at discharge or one year after procedure, would have shown some improvement in outcome. Some evaluations have shown that changes in mortality are correlated with changes in complication or problem rates, while other evaluations have shown no correlation.^{10,11} However, given the current emphasis on outcome analysis, mortality should be an appropriate parameter to evaluate. In addition, given the extensive PRO contracting, complex implementation process, and high cost, one would hope to have seen an improvement in mortality.

Although we did not look at the period from

1984 through 1989, there is no reason to suspect the analysis would be different since we looked at four periods with PRO review.

Severity of illness was not evaluated during these periods; however, during the PRO periods admission criteria was specified by the PRO including severity of illness and intensity of service.¹² In addition, the admission sample is fairly large and includes the same months of every year which should minimize the effects of transient variations in severity of illness.

There were no specific admission criteria in 1983. Thus it is possible that less severely ill patients were admitted and the mortality would be higher when corrected for severity of illness. This remains a possibility. Nevertheless lack of change in mortality with various levels of PRO review suggests that the comparison to 1983 may be accurate.

More recently the PRO has turned to improving average care rather than "driving out substandard physicians."¹³ A new approach is especially important since our data suggests that there may have been little benefit to the first nine years of the PRO. If our data can be confirmed in a multihospital sample in Florida, it suggests that a large amount of money and time were spent with uncertain benefit to the patient. In addition hospitals have to spend a substantial sum for employees to deal with the PRO.¹⁴

One earlier analysis raised concern regarding redundant systems in peer review.¹⁵ Our analysis suggests that possibly more careful planning of peer review activities and the avoidance of redundant systems should be undertaken before new peer review activities are implemented.

Conclusion • If these results can be confirmed in a larger sample, it would suggest that mandated Medicare review of hospital inpatients may not result in significant improvement in patient outcome, particularly as measured by mortality. New systems of quality improvement for Medicare recipients should be very carefully evaluated before implementation. In an era of limited resources, Medicare dollars spent on redundant or low yield systems may be better utilized in other areas of health care delivery.

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Strong-arm tactics are inappropriate to situation

by Alan E. Reider, JD
Special to Ocular Surgery News

Armed government agents storm a medical building and order employees to touch nothing. They herd patients into examination rooms for questioning and prohibit employees from talking to anyone.

Outside, in front of the entrance, a trooper with a sawed-off shotgun stands guard and tells patients that the office is closed. The trooper stops anyone from leaving unless they have been cleared.

Documents, including medical records, financial records and personal items, are seized and taken out of the offices. Weeks, and in some cases months go by and the government agents refuse to reveal the basis for their activities.

The scene described above is not of Bosnia or some other nation in turmoil. Instead, it is a scene which has been repeated in varying forms in several instances during the last year by federal and state agents against physicians who are under investigation for fraud in the United States.

In most cases, the attack is without warning. No one had questioned the physician's practices before; no one had advised him that his billing



Alan E. Reider

was inaccurate; no one had alleged that the services rendered were unnecessary.

"Doctors are highly trained professionals. They know which services are appropriate, and which are not. They can easily understand the guidance provided by the Medicare and Medicaid programs and by private insurers about appropriate billing," say the guardians for the trust fund.

Not a laughing matter

What a joke. Look at the internal disagreement today among ophthalmologists about the proper practice parameters for any procedure. And when was the last time a Medicare carrier printed anything that was comprehensible or provided guidance as to what services were appro-

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ite? You cannot schedule a good reimbursement consultant for this, because the demand is so great—and even they disagree among themselves. No, the rules in some are anything but clear. I suggest that a physician by way of education should know the carriers want them to bill services is sheer folly. Even if the agents are correct, even the physician was wrong and should have known the appropriate way to bill, or should have known a service was not necessary, does it justify a response with armed

agents descending on a practice, frightening employees and patients? Is it appropriate to remove medical records of patients who are undergoing treatment, and whose health may be threatened because the physician does not have the documentation available to treat that patient? What is the justification for refusing to reveal the allegations against the physician, when the underlying affidavit which supported the search warrant has been sealed?

We are not dealing with murderers or drug dealers. We are dealing with physicians. And although not every

physician is a saint, neither they nor their Medicare patient pose any physical threat to agents who descend on the office like a battalion of Marines.

Ruined reputations

The treatment I have seen in these cases leads me to the conclusion that either the enforcement agencies have no idea of the effect of their actions on these individuals or they simply do not care. Most physicians have built their practices on their good name and reputation in their community.

Obviously, when word of the raid

is out, that reputation is all but destroyed. In some cases the physicians found themselves on the 6 o'clock news, as camera crews just happened to be there when the agents showed up. So much for the good name in the community. So much for "you're innocent until proven guilty."

Do not misunderstand my message. I am not criticizing the federal and state governments for taking seriously the concern about health care fraud. I do not deny that it exists. Nor do I disagree that those guilty of such activities should be punished. Those physicians have violated a trust bestowed on them by both their patients and the general public.

But I do object to the tactics that are being used against those physicians. Even for those who have acted inappropriately, the punishment already endured is likely to be more severe than any sanction to be imposed.

And what about the physician who is innocent but has been unjustly accused? How can we measure the damage to him? Where is the voice of protest? Why is there no outcry from the medical community or anyone else about this kind of treatment? Perhaps it is because few want to be seen as defending individuals accused of defrauding the government.

Unfortunately, until we recognize that accused does not mean guilty and are prepared to stand up against this form of treatment, more physicians will undoubtedly suffer through similar experiences. ■

Transplant patients don't know what they're missing

ALG-scandal denies thousands the drug many doctors consider the best, safest

GANNETT NEWS SERVICE

When Philip Bruell had a kidney transplant in 1988, doctors gave him one of the most successful transplant medicines ever used to keep his body from rejecting the organ. When he needed it again last year, the drug had been banned.

The one he received instead made him so ill he wound up in the hospital for two weeks "too sick to even sign a check."

The victim of a research scandal at the University of Minnesota, the drug — Minnesota ALG — was withdrawn three years ago this month by the federal Food and Drug Administration after more than two decades of use.

In an ugly case that has soiled the university's reputation, the illustrious surgeon who made ALG a success, John Najarian, has been charged with a chain of criminal misdeeds, including selling it illegally and contributing to the deaths of nine patients.



John Najarian
FACES CHARGES

effects or, possibly, lower survival rates.

Particularly at risk, they say, are blacks and children, both of whom have a tough time getting their bodies to accept donor organs and for whom ALG has been shown to increase survival rates. In addition, at least one doctor blames a patient death on the drug he used as an alternative. Some also report more cancer, but caution that the complexity of transplant therapy makes it impossible to find a cause.

"Not having this drug around has been very detrimental — to the point of death of certain individuals," said Dr. Joshua Miller, University of Miami chief of transplant surgery, who used ALG on more than 1,000 patients.

It was one of his patients who died from an allergic reaction when a drug called ATGAM was used after ALG was withdrawn. Baylor Medical Center surgeon Tom Gonwa also may have had a patient die from a reaction to ATGAM.

Said Miller: "We may never know for certain, but there are probably a lot of deaths that will result from using less effective alternatives."

One clue is a study in the journal *Transplantation* in February showing

Please see **ALG, 4A** ►

ALG

ALG twice as effective as ATGAM in preventing early rejection of donor kidneys. A serious rejection episode is considered to compromise long-term survival.

Oddly, there has been little clamor to get ALG back. But the reasons may be understandable: Few patients know about it, and many doctors who used it may fear reprisal by the FDA.

"Patients don't have access to this information. No doctor would ever say, 'There's this great drug but I can't give it to you,'" said Lisa Kory, head of TRIO, Transplant Recipients International Organization, in Washington, D.C. A former transplant coordinator, Kory saw more complications in patients after the drug was pulled.

As many as half the transplant centers in the United States used ALG routinely for 21 years, and so accepted did it become that many likely did not closely follow FDA regulations regarding its use. Some experts estimate it was used in two-thirds of kidney transplant patients, as well as in heart and liver patients.

"I know for a fact there are physicians who would like to complain about its

loss but don't for fear they, too, will be investigated," said Dr. Arthur Caplan, medical ethicist at the University of Pennsylvania, who terms "immoral" the sudden removal of ALG.

But interviews with more than a dozen of the nation's top transplant doctors and other experts reveal that even three years after its withdrawal, many centers are still struggling to fill the gap left by ALG in the complicated brew of drugs needed by transplant patients.

"What service has been done the public?" asks Dr. Phillip Halloran, medical director of the division of nephrology at the University of Alberta, who used ALG in hundreds of patients over a dozen years.

"More harm has been done by withdrawing this drug than permitting its use to continue. The withdrawal has left a gap that cost many people dearly."

Minnesota antilymphocyte globulin, a serum made from the blood of horses, is often credited with providing the breakthrough that made kidney transplantation mainstream therapy and put the brilliant Minnesota surgeon Najarian, who

purified it, on the map. It subsequently was adopted for other transplants.

Today, Najarian's long reign as one of the world's most eminent surgeons lies in tatters. He faces 21 criminal charges, including illegally marketing a drug that contributed to the death of nine people. Among the other charges are hiding adverse reactions from the drug, failure to inform patients properly and double billing expense accounts. He could face an 81-year prison sentence and fines of \$3.5 million.

There is no question Najarian and the University of Minnesota (where he was chief of surgery until removed in 1993), did not follow FDA regulations in selling, using and testing ALG.

Until it was withdrawn, ALG remained an experimental drug — never given the proper scientific trials and never approved by the FDA. All the while, however, it was sold to transplant centers throughout North America and Europe with FDA and University of Minnesota knowledge.

Why, after so many years, the FDA finally clamped down is unclear, as is

who is to blame in this messy tale of life and death.

The real cause of the nine deaths attributed to ALG in the federal lawsuit may be questionable, said Dr. Arthur Matas, a university colleague of Najarian's.

Given the severe illness of patients and the drastic medical care they need, such deaths are not surprising, he said.

That ALG was yanked quickly and not made available provisionally given its defacto status as an accepted therapy seems draconian to many doctors. After unsuccessfully shopping it around to drug companies, most of whom decided it would not be profitable enough, the University of Minnesota simply closed the program in March 1994.

"There's a lesson here," said San Francisco heart transplant surgeon Dr. J. Donald Hill, who used ALG and whose patients have the highest long-term survival rates in the country.

"When a federal agency closes down a product in the name of protecting the public, they have an equal responsibility to make sure the patient doesn't suffer from overprotection."

The present onerous
government
regulations are in
many ways more
oppressive than the
British colonial rule
that sparked the
American Revolution.

Mr. MCINTOSH. Thank you, Dr. Larsen.

Let me take an opportunity to speak now for the record here what we've said in several other of our hearings. If for any reason you feel that FDA has—or any other Government agency for any other of the witnesses has, as a result of them participating today, taken a tougher or more aggressive stance vis-a-vis their business or their enterprise, let us know because we are aggressively pursuing examples of that where the agencies have sought to intimidate people from coming forward.

And frankly, this Congress will not permit that to happen. So the agencies are on notice that we're going to look into any such allegations of that. And if you or anybody else who has been here today feels that is happening, please contact us immediately.

Dr. LARSEN. Thank you.

Mr. MCINTOSH. Thank you for your testimony.

Our next witness is Mr. John Solheim who is the CEO of St. Mary's Regional Health Center in Detroit Lakes, MN, which I take it is where Mr. Peterson hails from.

Welcome and thank you.

Mr. SOLHEIM. Thank you.

Mr. Chairman, members of the subcommittee, my name is John Solheim. I am the CEO of St. Mary's Regional Health Center in Detroit Lakes, an 87-bed hospital with a 100-bed attached long-term care facility.

I would like to thank you for this opportunity to speak to you today about some of the overly burdensome Federal regulations placed upon hospitals and nursing homes these days.

But first, I would like to thank Congressman Collin Peterson and Congressman Gil Gutknecht and the subcommittee for their legislation that would require a cost benefit analysis of new regulations and require review and elimination of regulations that have outlived their usefulness.

I applaud the entire House of Representatives for its monthly correction day as a mechanism to speed up the elimination of unnecessary regulation.

In fact, much of what I will present today also has been identified by the American Hospital Association as candidates for Corrections Day action.

In Minnesota and across the United States the emphasis these days is on increased cooperation and collaboration among health care providers. The goal is to bring the various segments of the health care system together to improve the quality of care, increase efficiency, reduce costs, and eliminate duplication.

Congress could help us by modifying the so-called Stark law which prohibits physicians referrals when the physician has a financial relationship with the organization to which he or she is referring and Medicare fraud and abuse laws which prohibits payment in exchange for referrals of Medicare and Medicaid patients.

The guiding principle of these laws—to prevent physicians from inappropriately referring patients for unneeded services based on the potential for financial gain—remains valid. But these laws were drafted when health care delivery was dramatically different from the systems that are evolving today.

They stand in the way of hospitals, physicians, and other providers working together to coordinate care because any truly coordinated system involves a variety of referral and financial arrangements.

Today, the various incentives built into the health care arrangements serve the same purpose as the Stark prohibition and fraud and abuse laws: To prevent the overutilization and therefore higher cost of services. The laws need to be reexamined in light of the payment methods and business relationships that are developing.

Specifically, Congress should expand the exemption to the self-referral law to include a variety of risk-sharing agreements like capitation and withholds that create incentives to discourage overutilization of services.

Second, permit physicians to have financial relationships with hospitals and integrated service networks.

Third, suspend implementation of the law until final rules have been written. The Department of Health and Human Services has yet to publish final regulations for the 1989 law, or even propose regulations for the 1993 expansion which went into effect January 1, 1995.

I would also like to mention a few useless regulations that could easily be eliminated. Some duplicate other protection mechanism. Eliminating others would allow more reasonable approaches to reaching public policy goals.

First, eliminate the requirement that existing facilities such as drinking fountains, toilets, and telephones be moved, sometimes as a matter of inches or replaced, to comply with the ADA act.

For a small facility like St. Mary's this means needed money for capital equipment to improve patient care has to be diverted.

Second, eliminate the requirement that health care providers track shipments of infectious waste after they leave the hospital until the waste hauler ultimately disposes of them. If these haulers keep the records why should the hospital hold onto them for several years.

Third, eliminate a Medicare condition of participation requirement that specifies the content and requires Federal review of an institutional plan for capital expenditures over \$600,000. Federal health planning programs are no longer functioning and most Medicare capital is paid prospectively.

On the nursing home side, Congress should consider eliminating the need for a minimum data sheet for some residents. It currently has to be generated for everyone admitted to a nursing home, regardless of length of stay. This is unnecessary documentation which uses valuable nursing time.

Second, eliminate the routine assessment of the resident's condition which needs to be done every 90 days and only require assessment when there is a change in health status. This diverts needed time for patient care to needless paperwork.

Third, eliminate perpetual surveillance of nursing homes that have demonstrated a track record of complying with standards and providing quality care. Give facilities that have proven themselves a longer interval between compliance survey.

Not all regulation is without value. But it is important that as the health care environment evolves all rules and regulations be

revisited and revised so that these rules that were once useful do not stand as a barrier to progress toward higher quality, low cost effective care.

Thank you.

[The prepared statement of Mr. Solheim follows:]

Draft

Testimony of John Solheim, CEO, St. Mary's Regional Health Center In Detroit Lakes, before the Government Reform and Oversight Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs. Rep. David McIntosh (R-IN) chair.

1:30 p.m., August 7, 1995, the Board Room of the Stearns County Administrative Center, 705 Courthouse Square, St. Cloud, Minnesota.

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The guiding principle of these laws — to prevent physicians from inappropriately referring patients for unneeded services based on the potential for financial gain — remains valid. But these laws were drafted when health care delivery was dramatically different from the systems that are evolving today. They stand in the way of hospitals, physicians and other providers working together to coordinate care, because any truly coordinated system involves a variety of referral and financial arrangements.

Today, the various incentives built into health care arrangements serve the same purpose as the Stark prohibition and fraud and abuse laws: to prevent the overutilization, and therefore higher cost, of services. The laws need to be re-examined in light of the payment methods and business relationships that are developing. Specifically Congress should:

- Expand the exception to the self-referral law to include a variety of risk-sharing arrangements (e.g., capitation and withholds) that create incentives to discourage overutilization of services.
- Permit physicians to have financial relationships with hospitals and integrated service networks.
- Suspend implementation of the law until final rules have been written. The Department of Health and Human Services has yet to publish final regulations for the 1989 law, or even propose regulations for the 1993 expansion—which went into effect on January 1, 1995.

I'd also like to mention a few useless regulations that could easily be eliminated. Some duplicate other protection mechanisms. Eliminating others would allow more reasonable approaches to reaching public policy goals.

- Eliminate the requirement that existing facilities such as drinking fountains, toilets and telephones be moved -- sometimes a matter of inches -- or replaced to comply with the Americans with Disabilities Act.
- Eliminate the Medicaid requirement for physician-written certification of the necessity for inpatient care, which results in denials of federal matching funds based on paperwork issues.
- Eliminate the requirement that health providers track shipments of infectious waste after they leave the hospital until the waste hauler ultimately disposes of them.
- Eliminate a Medicare condition of participation requirement that specifies the content and requires federal review of an institutional plan for capital expenditures over \$600,000. Federal health planning programs are no longer functioning and most Medicare capital is paid prospectively.

On the nursing home side, Congress should consider:

- Eliminate the need to do the Minimum Data Set (MDS) for some residents. It currently has to be generated for everyone admitted to a nursing home regardless of length of stay. This is an unnecessary amount of documentation which uses valuable nursing staff time.
- Eliminate routine assessment of a resident's condition and require assessments only when there is a change in health status. This also represents a duplication of documentation that is not necessary and again is a misuse of professional nursing staff time.
- Eliminate the perpetual surveillance of nursing homes that have a demonstrated track record of complying with standards and providing quality care. Give facilities that have proven themselves a longer interval between compliance surveys.

Not all regulation is without value. But it is important that as the health care environment evolves, old rules and regulations be revisited and revised so that these rules, which were once useful, do not stand as a barrier to progress toward higher quality, more cost-effective care.

Thank you again for your time this afternoon and your interest in this issue. And thank you again to Congressmen Gutknecht and Peterson for their continued support.

Mr. MCINTOSH. Thank you, Mr. Solheim.

Among other things I would like to send your testimony to three of the committees who are working on Medicare reform because your ideas fit in very much with some of the things they're looking at in ways of eliminating fraud and abuse, and yet giving flexibility to the provider to reduce the cost while doing so.

So I appreciate that and we will forward that to those three committees that are doing that.

Our last witness on this panel is Mr. Ed Zapp who is president, chairman and CEO of Zappco, Inc., a small multi-bank holding company.

Mr. Zapp, welcome. We will give you the microphone and let you proceed.

Mr. ZAPP. Thank you, Mr. Chairman.

We are a \$250 million asset multibank, small multibank holding here in the central Minnesota area. And we own and operate the Zapp National Bank of St. Cloud, First National Bank of Little Falls, the Melrose State Bank in Melrose, MN.

And in addition to those banks, we operate Zapp Data. It is a company that does data processing for our banks. And we do processing for the First National Bank of Buffalo, MN, which we do not own.

All of the banks have been serving our community for over 100 years. Zapp National itself has been owned and operated by my family for over 106 years. I tell you this simply to let you know the long-term commitment that we the community bankers have to the communities that we serve. This is not unusual in the State of Minnesota or around the country for that matter.

I myself am a fourth generation banker, and I have served as president of the Independent Bankers of Minnesota, president of the Bank Holding Company Association, which has membership in the following States: Wisconsin, Minnesota, Iowa, South Dakota, Nebraska and Montana. And I am on a committee for the Independent Bankers Association of America. And I am presently on the board of directors of the executive committee of Shazam, Inc., a regional owner-operated electronic transfer facility based in Des Moines, IA. I have been active in banking for the last 27 years. Time goes by fast.

Over that period of time, the regulations in our industry have just been phenomenal. You talk about tremendous growth; it is something to behold. I remember first when regulation Z came in, I was a small lending officer in the bank across the street. A customer who had been with us for years came in and I asked him for some information that I now needed to comply with the regulations. He took it as a personal insult to his integrity, and we never had him for a customer again.

There was nothing I could say that could tell him I wasn't questioning his integrity. He moved to another bank in town. I subsequently found out he found out that I wasn't the bad guy I was supposed to be; I was just trying to comply and do my job. But he was too embarrassed to come back.

Well, that was small potatoes from what has happened in the ensuing years. Regulation is important and in order for us to daily serve our customers, we have to be aware of and comply with all

the regulations of the Office of the Comptroller of the Currency, Federal Reserve, the FDIC, the State Banking Commissioner, the IRS, the Department of Labor, the FCC, and it goes on.

Just training our staff and monitoring their actions becomes a tremendous task. As well intentioned as many regulations are, and there are many good needed ones, many are overlapping and confusing as you have heard today.

Some of the most recent ones have tended to micromanage our business completely, with the effect of reducing the financing of business in the community to a formula and leaves no room for entrepreneurial initiative.

This is rather disturbing to a community banker because that is our bread and butter. The ability to make decisions to work with our customers is our survival.

I call your attention to what is happening in our industry. You are starting to see the disappearance of the middle man real fast. And that will continue if something isn't done.

We find ourselves many times having to focus all our efforts on regulations and the reporting requirements of the transaction to determine if we can make the loan—to the detriment of being able to spend the time directly with a customer and really addressing their needs.

The burden of dealing with the proliferation of the number of regulations is further exaggerated by having to keep up with the constant changes to those regulations. It takes a lot of time to educate your staff as well as having to educate your customers to the changes.

I personally get about—it will vary in a week, but it is never less than about 5, sometimes as many as 10 or 12—changes or additions to the regulations. And those have to be looked at. Sometimes they are recommendations for changes. We have to figure out how we're going to be affected—and answer and it takes time.

A few years ago one of my fellow bankers demonstrated the burden of the sheer number of regulations by piling them one on top of the other. The stack reached the ceiling and halfway up again.

Today a lot of the regulations come in the form of electronic media, and therefore I am not able to demonstrate to you the height of the current stack. Regulations now cause us in banking to police our customers, reporting their transactions to the Federal Government.

We have to keep track of everything for statistical purposes. Safety and soundness sometimes seem to take a real backseat.

Let me just close by telling you some of the cumulative effects that we have in our small organization because of this. We estimate that we have to employ an additional six full-time people to comply with regulations that we find—would be ineffective—are ineffective. That is 6 out of 180 employees.

The cost of their salaries is \$169,000 a year and the space required to house them, computers and all that kind of stuff, another \$60,000. Programs for compiling the data, research, \$22,000; writing and testing, \$20,000 to \$30,000; implementing, \$25,000. That is the data processing part of it.

Then we have to teach our staff, we have to do marketing to the customers to go out and tell the customers what the heck it is all

about to begin with, fair lending and all that kind of stuff. That runs up to another \$50,000, \$30,000 for the marketing and printing on the notices and mailing and another \$20,000 for costs.

We figure it runs annually about \$351,000 to comply with unnecessary regulation. Anything that can be done to reduce the burden of overregulation and reporting will allow the industry to operate more efficiently and ultimately allow us to provide more and better services, will be welcomed.

Thank you.

Mr. MCINTOSH. Thank you, Mr. Zapp. We appreciate all of your testimony.

I cannot resist after that testimony: who pays for that \$351,000?

Mr. ZAPP. The cost of goods goes off to the customer. The public pays the bill.

Mr. MCINTOSH. So you are forced to charge more for the services you provide?

Mr. ZAPP. That is right. If you take that in our organization and you run that across the country—we're small potatoes—you're talking about a lot of money. A lot of money.

Mr. MCINTOSH. Exactly, if you multiply it out.

Dr. Larsen, I was curious: You mentioned ALG.

Dr. LARSEN. Yes, sir.

Mr. MCINTOSH. Could you describe what that substance is and does for us a little bit?

Dr. LARSEN. Yes, I included in my written testimony here a copy of the article which appeared in the St. Cloud Times yesterday. It goes into some detail on it, but basically it is a drug made from a serum of horses, and it is given to patients who are receiving transplants; liver, lung, heart, those type of things.

It was started at the University of Minnesota by Dr. John Najarian who was head of surgery there at the time I was a medical student, and I graduated 21 years ago. And he has been one of the real geniuses of transplant surgery around the country.

They gave this ALG to their patients. They also gave it to many of the transplant centers around the country.

The university knew what was going on and the FDA knew what was going on, but nobody questioned. It was essentially a de facto approved method.

Then when the FDA decided to prosecute this case it was taken off the market. As the article says, a number of transplant surgeons around the country feel that was an immoral thing to do because it reduces the chance that these people have to survive their transplant.

If you had a loved one who needed a liver transplant and their chances are going to be less and you can't have this drug because an FDA career-advancing bureaucrat is pushing for control, you would be mad.

Mr. MCINTOSH. I would be mad as hell. So you are telling me that FDA has forced them to take it off the market even though everyone who is involved with these transplants feels that it helps improve the rate of survival?

Dr. LARSEN. That's correct, and you have a copy of the article which is a summary of what has happened to the ALG program.

ALG was withdrawn from the market or at various centers around the country in 1993. It has been off for 2 years now.

Mr. MCINTOSH. I really appreciate you bringing that forward. We just had Dr. Kessler before our subcommittee along with another subcommittee on the issue of breast implants. His scare tactics caused numerous women to forego treating breast cancer surgery. It looks like we're going to have to get him back. This is amazing to me.

Thank you for bringing that forward. We will look into that because anytime somebody's life is at stake I think we've got a responsibility to make sure that we're not making stupid decisions.

One other quick question and then I will turn it over to my colleagues. On the question of fraud, one of the issues that we have been looking at—either for Dr. Larsen or Mr. Solheim—is to empower patients to let them have the ability or an incentive to gain an economic benefit if they identify fraud in the Medicare system. You can apply that more broadly to some of the other Government finance systems as well.

Do you think that would work better as, say, a replacement maybe, for the Stark Act prohibitions or other things? Do you think that approach will actually help us reduce any type of abuse or fraud in the system and create more pressure to reduce the costs?

Mr. SOLHEIM. I think anything other than the Stark bill will help, and I think having the consumers—which they do now—have incentives to look at the bill, that is important. The industry wants regulation for severe product abuse, but overburdensome to achieve that 10 or 5 percent of the problem is—overcompensates for the issue and limits the meaningful things that could go on the market that largely benefit the consumer in the longrun.

So anything but the Stark bill I think would be an improvement from the hospital provider side. I don't know how the doctor feels.

Mr. MCINTOSH. I will tell you the patients think there is a lot of it going on. Whenever you mention this—we all have town meetings in particular in this issue—and people say: Well, let me tell you about this. This can be one way where you can say, well, now you have something to do about this.

Dr. Larsen.

Dr. LARSEN. Yes; that would be a good program if it also carried with it the accountability of whoever is making the accusation so it doesn't foster unnecessary accusation.

No system is perfect, but it seems like maybe the market system is still advantageous in giving up goods and services in many ways.

Mr. MCINTOSH. Thank you all. I appreciate that. Mr. Peterson, do you have any questions?

Mr. PETERSON. Thank you, Mr. Chairman.

I want to thank the panel for bringing some good issues of testimony before us. I will try to be brief in case there are any other folks who want to testify.

Dr. Larsen, on the physician review organizations, our group of coalition democrats had a presentation by most of the health care people in this country a couple of weeks ago with regards to some ideas they have for reforming Medicare, trying to inject some more competition as a way to try to control costs, which seems to make a lot of sense.

Apparently, these organizations were set up to try and have the Government figure out what the best and most efficient way to do things and get rid of fraud? That was the theory behind this in 1983, I understand; is that what they were up to?

Dr. LARSEN. And supposedly to monitor the quality of the care.

Mr. PETERSON. This just operates in the Government's sector of the medical system?

Dr. LARSEN. Most of the cases I've been associated with are with Medicare.

Mr. PETERSON. So you don't have any kind of system within your professional organizations to do a similar kind of thing, because it has kind of been pushed out by this Government program, is that what has happened?

Dr. LARSEN. Well, within every hospital and surgical center there is a quality review department that monitors quality outcomes, et cetera. So the Federal program is essentially redundant.

Mr. PETERSON. Yes; duplicating that; right.

Dr. LARSEN. Certainly, according to this article and from my own personal experience which is supported by speaking with many of my colleagues, the PRO does not appear to be giving us our money's worth for improvements in care. And I think we could do very well without it and people would still get treated very well.

Mr. PETERSON. Is that pretty much the feeling throughout the medical community? That these things—time has passed? Kind of like the health planning agencies and all these other ideas that didn't work?

Dr. LARSEN. As you know, any Government agency—and I am not expert in governments, but it seems like they try to justify their existence. You know, you get a different answer from the PRO.

Mr. PETERSON. Yes; but within your profession they clearly see this as redundant? That the existing committees could do a better job?

Dr. LARSEN. I have not spoken with any of my physician colleagues who have shown me one case that they felt the PRO improved the standard of care, the quality of care, for any individual that they've taken care of.

Mr. PETERSON. I think in this new climate we may have a chance to seriously take a look at this.

You say they haven't implemented any of these rules, and they haven't even proposed regulations. How do you operate if they haven't done them and don't even know what they're going to be? Do you just kind of guess?

Mr. SOLHEIM. Again, you incorporate legal counsel that seems to always have the answer for some of these proposed things. And you limit your arrangements that you can do in the creativeness that the market drives and puts together to actually integrates.

So you really guess. You have sometimes cases that come out that attorney generals have prosecuted or something like that that sets some formats to follow, but it varies from State to State.

So it really limits the creativeness that can go on of two individuals, physicians, in hospitals that want to collaborate. So it is really a guessing game.

Mr. PETERSON. What if you guess wrong?

Mr. SOLHEIM. Then that's—you guess wrong and you end up being fined retroactively if they ever get the rules out. Organizations are limited by setting up these systems. Some go ahead and do it to the best of their knowledge at that time and take that inherent risk.

Mr. PETERSON. How do the attorneys dare to advise you? If they're wrong wouldn't they be liable?

Mr. SOLHEIM. They always have a contingent clause at the bottom saying: This is based on our opinion at the time that these—

Mr. PETERSON. I'll give you some advice if you want some.

Mr. SOLHEIM. Right. You know, but they go around the rest of the country and look at organizations, and they kind of guess. It is a guessing game.

But it really paralyzes local communities from doing what is right, to integrate care for the future which the market will draw.

Mr. PETERSON. I am familiar with the IRS. We didn't have the regulations half the time either when we were trying to operate.

Mr. Zapp, I think you're aware that we are moving in the House for some pretty decent regulatory relief legislation for banks. And we're hopeful we're going to get rid of a lot of these regulations that you have been talking about.

Mr. ZAPP. They really are needed. I applaud those efforts.

Mr. PETERSON. And I think all of us are onboard and are going to do what we can do to get rid of a lot of that.

Thank you, Mr. Chairman.

Mr. MCINTOSH. Thank you, Mr. Peterson.

Mr. Gutknecht, do you have any questions?

Mr. GUTKNECHT. Mr. Chairman, I don't have any additional questions.

I just want to thank the witnesses and thank you for your excellent testimony.

Mr. MCINTOSH. Thank you all for coming.

By the way, Mr. Solheim, I noticed you had mentioned one thing on nursing homes about decreasing the amount of inspection for those with a proven track record and focusing the effort on ones where there are problems.

That seems to me to move in exactly the right direction, both in creating incentives for them to be in the good list, not the bad list, and then targeting your resources where there are real problems. Thank you for that in particular.

Thank you all for coming today. I appreciate it greatly.

Dr. Larsen, let me talk to you later about this ALG issue.

At this point I would like to invite the gentleman who requested some time at the beginning of the hearing to perhaps be the first witness in the open forum. If you want to come forward.

Then anyone else who would like to participate, please come forward and perhaps form a line down the center aisle for us, if you don't mind. That might be the easiest way for us to do that.

[Pause.]

Mr. MCINTOSH. What I propose we do is ask everyone to keep their remarks to 3 to 5 minutes, whatever you need. Then we will ask questions. If I could at this point ask everybody who wants to testify to please rise and raise your right hand.

[Witnesses sworn.]

Mr. MCINTOSH. If you could state your name and where you are from so that we can put that into the record.

Yes, sir.

STATEMENTS OF ROD SKOE, CHAIRMAN, MINNESOTA CULTIVATED WILD RICE VICE COUNCIL; TOM HALL; FORREST WILKINSON; GINNY YINGLING, ASSOCIATE STATE DIRECTOR, CLEAN WATER ACTION; ROSE ARNOLD, CHAIR, STEARNS COUNTY BOARD; BOB MINKS, MINNESOTA PLANT FOOD AND CHEMICALS ASSOCIATION; DAN COLBURN, CHAIRMAN AND CEO, COLBURN, INC.; RICHARD WEBB; AND DREW WILKENSON

Mr. SKOE. Yes. My name is Rod Skoe. I am chairman of the Minnesota Cultivated Wild Rice Vice Council. I am a farmer from rural northern Clearwater County in Minnesota.

I'm attempting to continue what my father and uncle started 30 years ago which is doing some economic development in Clearwater County. We started our project—our farm. We were receiving tax credits.

We recently spent over \$20,000 in attorney fees alone for our last U.S. Corps of Engineers permit.

I spent 6 years now on the wetland regulatory maze. The main reason this has taken 5 plus years and thousands of dollars is the Fish and Wildlife Service. The Fish and Wildlife Service wants a pristine and untouched world. They do not recognize that agricultural lands are fields and not native areas any longer.

The amount of time and money that the agencies have spent on my 53 acres, they could have bought these 53 acres. For the amount of time and money I've spent, I could have bought them back.

The NCRS is supposed to work with agriculture. Why have two Government agencies doing the same thing? The Fish and Wildlife Service does not understand agriculture. Why does the Fish and Wildlife Service have the authority to undo the National Conversation of Research Service's work?

I have gone through the Corps of Engineers permitting process and mitigated all the wetlands that were converted on my farm. I have worked with the NRCS through the State level to the national level to achieve a minimal effect statement.

And the Fish and Wildlife Service at a very late date, after they had commented on the Corps permit, said that there were valuable wetlands that were converted and my mitigation wasn't valuable enough.

Please remember that the county that I live in, Clearwater County, has 80 percent of its presettlement wetlands remaining. It is not like we're not in an area that has wildlife and water holding areas.

These counties need economic development more than they need duplication of government oversight on wetlands. Specifically, I would request that wild rice, because of its unusual nature as a crop—we are not removing the wetland characteristics of the areas that we farm—should receive an exemption from the Food Security Act.

If the land is agricultural land already, the wetland characteristics that are there will be enhanced by wild rice patties being developed, and the National Conservation Research Service will retain jurisdiction of these lands.

If the wetland is nonagricultural land, the Corps of Engineers will have jurisdiction on this land. We do not need two groups doing wetland mitigations. It is foolishness.

I really don't have much else to say. I just would like some answers as to why the Fish and Wildlife Service appears to have more authority at the Federal level than the NCRS does. Thank you very much.

Mr. MCINTOSH. Thank you, Mr. Skoe. Mr. Peterson, do you have any questions?

Mr. PETERSON. I think the Fish and Wildlife Service and some of their allies are doing a good job of diminishing their clout with some of the stuff they're doing, so they might take care of themselves.

But we are going to resolve this wetlands thing if I have anything to say about it. We passed the clean water bill through the House. It wasn't perfect, but it gets at some of these issues. Hopefully, we can get something through the Senate.

We are going to do something in the farm bill, and the issue that you raised. I am going to try to address that in the way that you said.

I feel in the House that we've got the support to do what needs to be done. Dave Minge and I have been working on proposals to give the entire process to the National Conservation Resource Service. And that's the direction we would like to head and get these other agencies out of the situation.

The other thing that I'm trying to do is take the Conservation Reserve Program and make wetlands a top priority in that program, so that if you get a wetland designated, you would be the first who could bid into the CRP.

Now, a lot of the bureaucrats are against that, too, because they lose control of the process. But it is the best thing that we can do I think on a positive basis to try to preserve wetlands.

So we're aware of the problems. We are fighting a lot of folks who are sitting in their apartments in New York City and San Francisco and don't have a clue as to what they're doing. It is a big problem. But I think we're going to have the clout to do what needs to be done this time, at least in the House, and hopefully we can get the Senate to go along.

Mr. MCINTOSH. Thank you, Mr. Peterson.

Mr. Gutknecht.

Mr. GUTKNECHT. I just thank the gentleman from coming forward. I'm glad we heard a little bit about wild rice, and I hope the Chair and the staff will get to have at least some wild rice soup before they go back.

Minnesota, I think, still is the largest producer of wild rice in the United States—or California—

Mr. SKOE. Minnesota is.

Mr. GUTKNECHT. And the potential for wild rice, particularly if you are in central and northern Minnesota, is really a tremendous product.

Frankly, I've learned more about it in the last couple of years. And I hope we can keep you guys in business because I know it is tough out there and what you don't need is more Federal bureaucrats making it even tougher.

Mr. PETERSON. If the gentleman will yield.

Mr. GUTKNECHT. Sure.

Mr. PETERSON. When I was in the legislature, I had the honor of working with this group to make wild rice the State grain of Minnesota. I got in a lot of trouble with the wheat growers and others. But if you go down to the capital you will see that wild rice is our State grain.

Mr. SKOE. We're not asking—due to the nature of our crop, our fields are located in flat wet areas. We're not asking to develop without Federal jurisdiction over us. We just want it to be one so we can get through.

It is clear that they don't really know what they're doing with us because I've been doing this now for 6 years.

Thank you very much. I have kind of a history of my last 6 years I would like to send up.

Mr. MCINTOSH. We would be delighted to receive it. Seeing no objection, we will make that part of the record.

[The information referred to follows:]

open mic.

Rod Skoe
Clearbrook, MN 56634
218-776-3300

Comments presented 9-7-95

I think that the problem with the federal laws are: one law can not fit all the situations that will occur concerning individuals in this large country.

There is always going to be situations that the rule makers can not foresee. The rules then become discriminatory because the exceptions are treated unfairly. Bureaucracies and their rules have no flexibility to compromise. The person with the unusual situation is unable to find a place in the regulatory maze. These unusual situations need exemptions from the law.

I am in such an unusual situation. Our farm was bringing non-agricultural land into an agricultural category. We completed the mitigations. The U.S. Corp of Engineers, required of us to bring this land into an agricultural classification. This federal agency consider it agricultural land with the mitigation done and complete, and another federal agency NCRS did not consider it complying agricultural land? How can this land be out of compliance with the federal law that controls agricultural land after it is brought into an agricultural classification?

How I have become a victim of over- regulation and a burdensome bureaucracy:

1. Fall '89 thru Spring of '90: I went to SCS to get information about how to develop wild rice fields and remain in compliance with 1985 Food Security Act.
2. March '90: Filed minimal effect request.
 - A. The minimal effect determination worksheet was improperly applied and request was therefore improperly rejected
 1. The rejection was made, based on the assumptions, that if any one of the 13 hydrological or biological values were negative the request could be rejected. The criteria that should have been used is; if the average of all 13 values used is negative the determination could be rejected
3. 3-9-90: I filed a late-filed "Commenced"
 - A. This request was approved and validated as correct at the county level.
 - B. U. S. Fish and Wildlife Service concurred that the project met the criteria for Prior Commenced,
 1. FWS said I had no good reason for filling late.
 - C. State ASCS committee never considered the reasons behind request.
 1. State ASCS committee rejected the request because of "no good reason for late-filing".
 - D. State ASCS Committee did not understand that we were not part of the farm program and therefore not required to file wetland determinations forms
 1. We never produced a "commodity" so 1026 form not filed out.
 2. We receive no federal government payments.
 3. Commodity production was necessary for non-compliance, Wild Rice was not considered a commodity until 1994.
4. 6-6-90: I was informed by SCS I needed U. S. Corp of Engineers permit
 - A. We spent the next 2 years and \$20,000 in attorney's fees, complying with the U.S. Corp of Engineers permitting requirements. Public notices, comments from all government agencies, comments from private individuals, mitigation etc.

1. We did direct mitigation of dikes- we lost an 18 acre field to wetland mitigation
2. U. S. Corp took 311 acres of land with no compensation as indirect mitigation
 - a. 311 acres of land I own and pay taxes on, but I can not use.
 - b. these acres taken to mitigate land that should have been considered prior converted
- B. U. S. Fish and Wildlife Service comments on my Corp of Engineers permit
 1. **"FWS stated that the project would not jeopardize those species and therefore no permit conditions or studies would be required."**
5. 6-26-90: After discussions with SCS personnel I filed a second minimal effect statement.
 - A. We had many meetings with SCS personnel at the state and federal levels
 1. All SCS personnel recognized my effort at mitigating the conversion
 2. All SCS personnel felt I should be eligible for Compliance
6. 5-5-92: Re-filed second minimal effect statement
 - A. many more meetings at state and federal level
 - B. Same result: NO decision
 1. All SCS personnel felt I should be in Compliance.
 2. SCS personnel have no way of allowing our farm in compliance with FSA because restrictive rules have been written by the bureaucracy restricting compliance
7. **1993 I am named Conservation Cooperator of the Year from Clearwater County**
8. 6-23-94 Still no decision. I appealed the wetland determinations.
 - A. This was an attempt to stop the wetland determinations that continued despite uncertainty as to the wetland classification
 - B. Wetland determinations were being done when the minimal effect determination not complete
9. 5-18-95: I met with Mr. Warren Lee, NCRS, Leader National Wetland Team again.
 - A. State NCRS recommended to Mr. Lee that he approve my minimal effect determination
 1. State NCRS personnel recognize mitigation that our farm did for the U.S. Corp of Engineers
 2. State NCRS personnel recognize I was first wild rice farmer through this mitigation/compliance process and which path to proceed on was not known
 3. State NCRS personnel give credit effort and attempting to be flexible in order reach a compromise
 - a. State NCRS felt federal rules should include non-participating farmers in conservation planning
10. May '95: I receive verbal approval of minimal effect from Mr. Warren Lee, NCRS, Leader National Wetland Team.
 1. I was told, the approval is done it is just a matter of getting the paper work done.
11. June '95: U. S. Fish and Wildlife Service personnel take a short trip to my farm and decide that there were important wetland values lost on my farm.
 - A. FWS decides that these wetland values were more important than all the mitigation that Corp of Engineers required us to do.
 1. FWS did not count all the upland that is currently in wild rice production providing wildlife and wetland benefits on my farm (these benefits are substantiated by research done at the University of Minnesota headed by Dr. Dan Sevardsky).
 2. FWS ignores all the mitigation the Corp required of our farm
 - a. the fields I abandoned,

- b. the area that was to be cleared that is now a wildlife area
 - c. plus the multitude of other things required of our farm.
 - d. they say the thousands of trees I have planted have no value.
 - e. FWS ignore all the effort NRCS and I have expended trying to reach compliance.
- C. They use outdated research and inaccuracies to justify their decision
 - 1. They used a 1983 study when a 1994 study reaches a different conclusion
- D. I lay all my cards on the table to try to reach a compromise all could live with. The U.S. Fish and Wildlife service kept drawing cards in order to deny my request. Is this fair?
- 12. 6-27-95: Minimal effect denied
 - A. This took 5 years, thousand of dollars, countless hours by me and personnel from several agencies
- 13. Clearwater Rice, our farm, filed a final appeal with NCRC for converting 53 acres of wetland.
 - A. This has been a lengthy and frustrating trip to nowhere.
 - B. I went to SCS's office asking for help,
 - C. I was not told I could not develop wild rice fields and remain in compliance
- 14. 7-28-95 CFSA reopened my prior commence decision
 - A. Reason: It should not have been denied because of the "no good reason to late file" excuse
- 15. Currently-- Because of changes in the rules since my process started, neither mitigation nor replacement are an option to achieve compliance.
 - A. 5 years have passed and still no decision
 - B. Until 1995 no federal employee ever told me that compliance would be impossible to achieve
 - 1. compliance through mitigation or replacement is impossible
 - C. If my appeal fails our farm will be out of FSA Compliance
 - D. Does the federal government want no input into conservation measures on my farm?
 - E. Will the federal government only impact conservation techniques on farmers in the farm program.
 - 1. This the program that enables them to force compliance on the farmer?
 - 2. Where did the idea of volunteering go?

The conclusion:

The bureaucracy has made a multitude of restrictive rule determinations concerning wetlands and The Food Security Act. "Non-frequently cropped land" now means land that had grain planted less than 50% of the years between 1981 and 1985. This rule means that land that did not have a grain crop planted 3 years out of 5 between 1981 and 1985 has a different set of rules than land that was turned black and cropped every year. Why? This land was farmed every year. Remember this farmer didn't plow their land every year, they were much more conservation minded and left their land in hay or pasture, but their land is considered non-frequently cropped even though they have farmed the land every year. The dates used to established this determination, 1981 thru 1985, have in effect made the 1985 FSA retro-active to 1981. This can not be legal. The bureaucracy has made determinations as to what land can be mitigated and under what conditions. PC land must be used in non-frequently cropped situations for mitigation. This rule itself eliminates most beef and many other farmers in our area from every achieving compliance. The land even though farmed was not considered as such by the restrictive definitions that federal agencies use. These restrictive rules are why mitigation and replacement are not an option for our farm. Is this good? The federal rule makers have excluded a large part of agriculture from the conservation measures that the legislatures have deemed important and passed as laws by these decisions.

This illustrates some of the frustrations of the many people who live in areas that have an abundance of wetlands. Multiple levels of federal control. Agencies that do not agree. Rules that are made by the bureaucrats who have a vested interest in there being more rules written and these rules being written more restrictive.

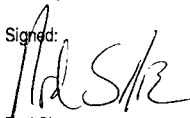
Counties that have 80% of their pre-settlement wetlands remaining should have different rules. They have done a good job of protecting their environments. They have no places to mitigate their wetland conversions. They desperately need the economic development that is being restricted. Remember there is not even agreement as to the benefits that wetlands provide. Maybe gravelly hillsides have more of an impact on groundwater recharge? Maybe these areas should also have restrictions placed on their economic development?

Economic development in these rural depressed areas is being halted by wetland regulation. If the rule itself is not daunting enough the process to get through the regulatory process is certainly enough to stop any potential development irrespective of the value to the community.

I feel that Wild Rice as a crop and other crops that do not specifically remove all wetland values should be exempt from the "Swampbuster" law. I think that the other wildlife and economic benefits they provide more than offset any wetland degradation. Especially, if when they work in a wetland, they are required to have a U. S. Corp of Engineers permit. Why have them pass the federal wetland test twice? I think that the inflexibility that the bureaucracy showed in dealing with my farm is an example of why an exemption is needed. Bureaucracies know no compromise.

These are some examples of why we need changes. Farmers and others in these areas are becoming the victims of over regulation and a burdensome bureaucracy.

Signed:



Rod Skoe

Mr. MCINTOSH. If our next witness could come forward and give us your name.

Mr. HALL. My name is Tom Hall, I grew up in rural Wisconsin in a small town. I am very aware of the environmental issues that face Minnesota, Wisconsin and the whole country. It is very interesting to hear everyone's testimony. But I did not hear one person say one thing about its concern for the environment. Everybody—it's dollars, dollars, dollars. There is more to life than just dollars.

In fact, I gave Congressman Peterson a printout of what appeared in the New York Times on breast cancer. And it has been well-known and the New York Times then correctly says in there that it—this new study seems to indicate that rising rates of breast cancer are indeed very closely related to the dramatic change in our environment and that that's been well known.

It is estimated that 70 to 80 percent of all breast cancers are related to causes directly from the environment.

Now, I hope I can cover everything quick. I didn't think we could testify today, so I will try to run through a couple of ideas very quickly.

First of all, I would like to make a positive statement. Since the Clean Water Act was passed in 1973 the Flambeau River in Wisconsin has changed from an open sewer, which there were no fish—it was a beautiful river to canoe on, I understand, but you couldn't fish it.

And 20 years later because of new wetland laws, because of the Clean Water Act and so forth they've cleaned that river up as they have the Mississippi, and we've made some progress.

But in other areas we're going backwards. I'm not going to start with the spotted owl or the redheaded woodpecker; I'm going to start with people, since we have an absolute epidemic of cancer in this country.

Since 1986 and 1993, breast cancer rates increased 41 percent in this country; colon and rectal cancer is going off the charts, 20 million Americans now have asthma. So we have a lot to do.

When you talk about taking away all these regulations, I have not heard one person—one Congressman from the Republican and these converted Democrats say one thing about what we are going to do. [Laughter.]

What regulations do we have that you're going to gut the Clean Water Act; if you're going to take all the enforcement away from EPA; if you're going to take away all this protection, what are you going to replace it with? I haven't heard one thing to that effect.

Some 95 percent of the wetlands in the country—and I realize Minnesota, especially up north here, maybe 50 or 80 percent of the original wetlands are still there. But nationwide that represents just 5 percent of our wetlands.

Ninety-seven percent of old growth redwood forests, most of our old growth forests are gone. And your species, including not just the spotted owl, the redheaded woodpecker, the pintail, 77 percent of the American Pintail Duck, just in the Star Tribune yesterday—several species of turtles, frogs, reptiles, up and down the spectrum of wildlife, has declined dramatically.

And that is because we—everything is for the buck. When are we going to stop and look and try to protect ourselves from—you know,

we can't just judge everything on the basis of how much money can be made.

For God's sakes, that is Government's role. That is your role in Washington: to save that small little fragment of wilderness that is left, to save that small little—Exxon wants to go up in northern Wisconsin and take the Flambeau River and dig it all out and turn it all into a huge copper mine.

I mean, if you just let these guys run rampant, it is just—so I guess I would like to have some comment on that.

Mr. PETERSON. Mr. Chairman, if I could: I do not disagree with you. And I am not doing this because of the almighty buck, if you will. There are just a lot of things that are going on out there that are not doing anything to preserve pintail ducks or any of these other species. That is what drives my constituents and me crazy.

For example, the Endangered Species Act we're going to have up for overhaul. I think we all generally support what they're trying to accomplish, but they get off on these tangents.

They found a gopher in California or Washington State, and I don't know, it has got some kind of name. I saw a picture of it. It looks exactly like the pocket gophers that I tracked when I was a kid. It looks exactly the same. Some guy bought a piece of property in California or wherever and found these gophers on this property that they said are endangered. Do you know what they made him do? He had to build concrete tunnels for these gophers and fill them up three-quarters with dirt and leave a tunnel on the top so these gophers could run around underneath his property.

In another case they found some snakes. And they made the guy put carpet, green carpet underneath the ground so these snakes could crawl around.

Mr. HALL. If that is the last member of that species, don't you think that species is worth saving?

Mr. PETERSON. It is not the last member of these species.

Mr. HALL. It must be endangered. It's close to the last. Can I answer you? I've heard those anecdotes, and here is one that is totally untrue.

Billy Tauzin, one of your converted colleagues—this was on CNN just a week or so ago—he cited an anecdote of some poor person in Louisiana that was restricted. That person responded that they had no problem with the regulatory agencies. They had a beautiful area. They lived off a swampland. And he turned around and threatened the person that revealed that, the person who it was his land, he threatened that person with a lawsuit.

Mr. PETERSON. I don't want to get into that. I'm saying I saw the picture of this gopher. I saw the picture of this concrete culvert that they made this guy put in. It cost him \$300,000. It is ridiculous.

We need to get in the Endangered Species Act to an ecosystem management that makes sense, not forcing some poor landowner to do something ridiculous that is going to bankrupt him.

And the second thing on this wetlands stuff: You go up in my country and fly with me in my airplane in the spring, you will see that 95 percent of the wetlands are drained because there is still water sitting around where they used to be. You can see them.

They're all over the place. They glisten all over the—as far as you can on the horizon.

What we're doing is the 5 percent that didn't drain them, we're asking those folks to pick up the entire cost to make up for everything that everybody else did.

Mr. HALL. So you're saying get rid of the rest—

Mr. PETERSON. No, I'm not. Absolutely not. What I'm saying is that we've all decided as Americans that we want to save the wetlands that are left. I want to save them and I think most of them do, but what we're saying is let's pay for it.

It is not fair to go out to my farmer and tell him that because you're the one who saved this wetland, now we're going to make you bear the cost all by yourself and the Government is not going to pay for it. It is not fair.

So us as Americans, we decided this; we need to compensate for people.

Mr. HALL. OK. I challenge you to bring up a bill that appropriates that.

Mr. PETERSON. I'm going to. The CRP has enough money to put all of the wetlands in it. It does.

Mr. HALL. OK. All right.

Congressman Peterson and McIntosh, I want to see alternatives. If you're going to throw the baby out with the bathwater, I want to see—

Mr. PETERSON. The CRP is an alternative. What is wrong with it?

Mr. HALL. I haven't seen it.

Mr. PETERSON. Well, we've got 37 million acres in the CRP. We only have 5 million acres of wetlands. We clearly can solve the problem with that amount of acreage.

Mr. MCINTOSH. Thank you for coming. I appreciate you testifying today.

Mr. GUTKNECHT, did you want to be recognized?

Mr. GUTKNECHT. Sure. I just want to say that I don't think anybody is talking about—we hear these terms about gutting these programs. I don't think anybody is proposing that. All we want is to bring the pendulum back to center.

Frankly, I go along with what Congressman Peterson said. Most of what we heard from constituents is where the pendulum has gone far too far.

Let me give you one of the practical results of that. This is a scary thing. I had a farmer in my district, in fact, it was a couple of farmers. They think they've discovered a relatively rare type of butterfly down in southeastern Minnesota.

You know what the other farmers have said? If they find any of those on their land they're going to kill them. OK?

Mr. HALL. That is real sad.

Mr. GUTKNECHT. That is sad, and it is a sad testament to the way they view the regulation and the regulators from the Federal Government. Because they're saying if they are going to come in and essentially take over my farm, I don't want any endangered species on my land.

Now, if we can change the attitude, if we can change the environment, if we can bring the pendulum back to center, I think most

farmers, they want to save endangered species, they want to save wetlands. They want to do all these things.

But they want it to be reasonable, and they don't want to be burdened with some of these prices that we've heard where people have to literally completely redo their entire property. They can't do any of this; they can't do any of that.

And I think if we have reasonable regulation, if we all work together on this, I think we'll get a better solution.

Let me just offer one other observation. Earlier this year we were invited down to the Natural Museum of Science that is down in—part of the Smithsonian.

Let me just tell you: Frankly, thousands and thousands of species have gone out of existence long before we ever opened a Federal printing press in Washington, DC. Long before the almighty dollar even existed there were thousands and thousands—

Mr. HALL. They've lived more dangerously in the last few years.

Mr. GUTKNECHT. That is an opinion. I don't know if there is any evidence of fact in that whatsoever.

Mr. HALL. There is irrefutable evidence that species are vanishing at an accelerated rate, at a horrific rate. We will have vermin and cockroaches left at the current rate. If we keep this deal of the majority through 1996, I tell you, man, we might as well just—

Mr. GUTKNECHT. Let me give you a couple of things that are facts. The Federal Government and the State governments control about 34 percent of the land mass in this country. In California alone there are over 13 million acres of land where they don't even permit human beings to go on.

The idea that we have—that there is no natural habitat left out there I think is a gross exaggeration. And all you have to do is look at a map and look at the millions and millions of acres.

In fact, there is one huge area in Washington talking about the spotted owl where they won't even let people in to count so they can find out exactly how many spotted owls there are.

At one time they originally said there were only 500 breeding pair. Now they're acknowledging there are at least 5,000. I don't know how many spotted owls there are, and I don't know how many there were at the turn of the century.

Mr. HALL. Ninety-seven percent of the oldgrowth forests, almost all the oldgrowth forest is gone. There is, almost no protection of that type of habitat. And it is very critical habitat for the spotted owls.

Hundreds of birds and animals—and it is other ecosystems as well: Those Federal lands are heavily logged. They are clearcutting a lot of this Federal land. And I understand this new Gorton amendment that was slipped in on the spending bill allows them to go in and just clearcut.

And it further removes any control. The Forest Service has been overcutting for many, many years.

Mr. MCINTOSH. Let me if I might add my statement to this.

First of all, I do think the gentleman raises a good point that all of us seem to be mindful of. We do need to come up with alternative solutions. And I think all of us who are talking about problems with regulations have said that it is not that we are

antienvironmental or antisafety or antihealth, it is we think there's got to be a better way of doing it.

I do think the gentleman has given us a fair and important challenge to put those proposals forward and would like to see work done in that area and wants the subcommittee to help facilitate that over the next 1½ years.

But let me caution that the static model doesn't necessarily mean there is no hope. I remember reading an article by Keith Snyder who is an environmental reporter for the New York Times, a very strong advocate of the environment, who pointed out that in South America much of what is considered as very precious habitat for environmental purposes—and Vice President Gore has written about it in his book—was in fact cleared 400 or 500 years ago by Indian culture. And it has all grown over and come back, and there are new environments and ecosystems that have developed there.

There is not a static model for what happens in the world. The environment is something that is fluid and changes over time. And what we need to do is take that into account when we develop our alternative proposals.

But I do appreciate your coming here and testifying today. And I take seriously your challenge that we do have to put these proposals out there about how we would protect the environment using a different approach.

Mr. PETERSON. Mr. Chairman, if you would yield.

Mr. MCINTOSH. Certainly.

Mr. PETERSON. I really do think that we need to start having a dialog. I have put forward some solutions that I think people ought to look at.

But I would like you to take a look at this. This is the EPA rider issue where we just debated on the appropriations bills and our reasons for what we did.

I gave a copy to the President and Vice President. I would like you to take that and take a look at it. And I would like your reaction and opinion. I will respond.

I think we need to do more of that. Anybody else who is interested here I will make available a copy of our analysis. My staff has that.

We want to try to find solutions that make sense. We are not out to drain all the wetlands. I wrote a lot of the words in the State legislature for preserving wetlands. But I did not—we did preserve by regulating. We put in place a wetlands tax credit. We did some things to encourage people to maintain wetlands, not go out and beat them over the head with regulations, and it frankly works a lot better. That is the direction I'm heading.

Mr. MCINTOSH. Let me start with the other people who want to say something.

If you would like to go next, sir.

Mr. WILKINSON. Yes, please.

My name is Forrest Wilkinson. I'm a natural carbon based life form born in Grand Marais on the shores of Lake Superior presently residing in Sartell, just north of here on the Mississippi River. I am also one of the founding members of the River Warren Research Committee.

The River Warren Research Committee cares deeply about the future of America and the world. The River Warren Research Committee knows that free people, not government, made America great. The River Warren Research Committee thinks all but the most basic government acts do more harm than good. The River Warren Research Committee assumes the best person to decide how your money is spent is you.

The River Warren Research Committee is determined to have truth in government. The River Warren Research Committee believes truth is best reached through local decisionmaking. The River Warren Research Committee endorses major cuts in government spending and regulation. The River Warren Research Committee is reality-based, not legality-based.

The River Warren Research Committee recognizes that nature is not fragile. It is chaotically evolutionary and infinitely adaptable. The River Warren Research Committee knows that the general public has been insidiously misled by the flawed, fear-mongering environmentalist agenda.

The River Warren Research Committee doesn't endorse trashing the planet, but is confident Earth is not threatened by some dire calamity brought on by human industry.

The River Warren Research Committee contends that only big government can amass the resources necessary to create any serious threat; keep government small and we'll be fine.

The River Warren Research Committee finds most local and regional environment issues are usually as overblown as global issues, and that real problems are often caused or exacerbated by government involvement.

The River Warren Research Committee recognizes the natural way is one of free, self-governing agents actively engaged in the selfish pursuit of their own private interest, bound only by the universal constants governing matter and energy.

The River Warren Research Committee believes people are basically good, kind individuals who, through free association, can take care of themselves and their little chunk of the world without big nanny watching over them.

The River Warren Research Committee is a general interest group in a sea of special interest groups. The River Warren Research Committee promotes the interest of the general public by constantly asking the question: What is the truth and is government involvement really necessary?

I have three copies of our latest report I would like to offer to the committee. That is all I have.

Mr. MCINTOSH. Thank you very much. If my colleagues don't object, we will make a copy of that report part of the record.

[The information referred to can be found in subcommittee files.]

Mr. MCINTOSH. Any questions for Mr. Wilkinson?

Mr. GUTKNECHT. Mr. Chairman, if I could. I've read some of the material you've sent out. In fact, it started several years ago when I was still in the legislature. Can you share with the members of the committee where the name River Warren came from?

Mr. WILKINSON. Our name, River Warren, is an extinct glacial meltwater stream that was for some time the only outlet of glacial Lake Agassiz. Approximately 10,000 to 15,000 years ago we had

the last glacial intrusion. The Des Moines lobe did reach all the way to Des Moines and in its recession it backed up—it did not actually back up but melted and deposited great amounts of sediment and soil over the region.

It also deposited huge amounts of water as it receded. It backed up over a glacial moraine that is presently over the Dakotas and Manitoba and created one of the largest freshwater lakes ever reported.

It is named after Mr. Agassiz, a French geologist who first came up with the glacial theories.

This lake—the level of glacial Lake Agassiz rose as the water built up behind the glacier as it melted. The normal lay of the land would have had that glacial lake drained to the north through Hudson's Bay, but the large ice mass in effect damned it up.

As the water level rose it eventually breached a glacial moraine at present day Brown's Valley, and the glacial River Warren was spawned. We would see water flowing in excess of the amounts of the Amazon, and it carved a trench some 3 miles wide in spots, some 600 feet deep through this glacial fill.

It flowed from present day Brown's Valley to Mankato, it took a dogleg left, a 90-degree left to present day St. Paul where it took a dogleg to the right, and flowed south to present day Cape Girardeau, over approximately Commerce Gap. Downstream of that, known as the Lower Mississippi, is in essence flowing over the remains of the trench.

As the ice continued to recede, it opened up what is called the Nelsons River. The Lake Agassiz drained away and it left behind a massive trench in which at the bottom you will find the Minnesota River and the Mississippi River.

This glacial trench of which I spoke is massive. It is huge. And it dominates the landscape. And it greatly impacts the characteristics of the underfit streams that flow in the bottom of it now.

So what we see in the region of the Minnesota River, we see a sluggish, slow meandering river, highly susceptible to flooding and sedimentation due to its natural characteristics on the bottom of this trench.

Primarily due to the large size of the Minnesota drainage basin, the rainwaters fall on this flat glacial terrain, and have to eventually fall those 200 feet into the bottom of the River Warren trench. And in the process it releases great amounts of energy which is released in erosion of these highly glacial soils. And all of these tributary streams falling into the River Warren channel are eroding as they have been doing for some 10,000 years now and this can be tracked.

Hence, the River Warren, and that is our namesake. The River Warren Research Committee has chosen that as their namesake because of a 4-year study put on by the State of Minnesota and some Federal agencies.

In essence, the only way they could come up with the conclusions they have was, in essence, to ignore the glacial River Warren and its impact on these water basins.

Mr. MCINTOSH. Thank you. I appreciate that.

[Applause.]

Mr. GUTKNECHT. Mr. Chairman, I asked him that question so you can better understand this area. Literally, all of northern Minnesota and much of Manitoba were one giant lake at one time. They were drained by this powerful river that they have named River Warren.

Mr. WILKINSON. Correct.

Mr. GUTKNECHT. And if you ever fly over the bluffs or spent some time in the bluff area of my district down along the Mississippi River, it helps to explain why you see this sort of carved-out area. It was a giant and powerful river.

Mr. WILKINSON. Massive. Absolutely monstrous. And it started relatively quickly and ended relatively quickly and left a dynamic bluffline of which Mr. Gutknecht spoke of, most of which is in highly erodible terrain.

Mr. GUTKNECHT. When all of this happened, it had profound ecological consequences.

Mr. WILKINSON. Massive, and some believe that this is truly the father of waters. Everyone believes that the Mississippi is.

Mr. MCINTOSH. Thank you both. I appreciate that enormously.

Mr. WILKINSON. Thank you. Have a nice day.

Mr. MCINTOSH. Thank you.

Our next witness on the open microphone, if you could give us your name and tell us where you are from.

Ms. YINGLING. Sure. My name is Ginny Yingling. I'm the State director of Clean Water Action. We chose not to testify today even though we did receive an invitation at the 11th hour Friday after we issued a press release about this hearing because we had been told—or at least one environmental group had been told—that no environmentalist would be allowed to testify.

The only reason I am coming forward now—I had no intention of legitimizing this hearing—except I have to respond to some of the comments that were made, both in the press conference before this hearing, and during this hearing about why environmentalists were not speaking, and I want to set the record straight on how this happened.

A little over a week ago one environmental group in this State received an invitation to attend the hearing and the letter specifically said there would only be testimony from business people.

When a person from that group contacted Congressman Peterson's office they were told that they would not be allowed to testify, that the speakers had already been selected. They said that they might get back to her; they never did.

We issued a press release on Thursday and immediately on Friday morning, we were contacted by Congressman Peterson's office with an offer to testify, which we refused because we felt it was not a sincere offer. It was only because we had threatened to expose the fact that these hearings were not going to be fair.

This open microphone clearly is a last-minute thing. It is not on the program for today. There has not been an effort to make these hearings fair; witness the fact that we had no idea that there was a hearing to be held down in Rochester.

So I wanted to refute the statements that were made in the press conference before this, that we were told we would be allowed to have a panel; we were not. We were told we would be allowed one

slot—out of how many today—to speak on behalf of the environment.

We were told there would be no open microphone, and as a belated effort to appear as an open hearing, there has been given an open mic period.

I felt it was necessary that we clarify this. We will be submitting written testimony, as I told Mr. Peterson's chief of staff, but I felt I had to respond to these comments today.

[The prepared statement of Ms. Yingling follows:]

CLEAN WATER ACTION

TESTIMONY REGARDING REGULATORY REFORM

Submitted to the House Subcommittee on Government Reform and Oversight
Pertaining to the August 7, 1995 hearing in St. Cloud, Minnesota

Prepared by Ginny Yingling
Associate State Director

Background: Clean Water Action is a membership-based, environmental organization dedicated to the protection of our nation's water resources. Our organization represents over 80,000 members in Minnesota and about 750,000 nationwide. We respectfully submit this testimony in opposition to the regulatory "reforms" currently proposed by the U.S. House of Representatives and the U.S. Senate.

General Comments Regarding Regulatory Reform

The need for government reform is universally agreed to by the American public, and supported by Clean Water Action. Examples of government waste and arrogance, while not ubiquitous, are all too common and must not be ignored. The more efficient and cost effective our federal agencies operate, the better they will be able to protect our citizens and our environment. However, the current "reforms" recommended by Congress are tantamount to throwing the baby out with the bathwater. Clean Water Action opposes any and all so-called "reforms" that amount to eliminating or impeding the implementation and enforcement of rules, laws and standards that protect the health, safety and environment of the people of this nation. In particular, we oppose the current proposals for risk assessment/cost-benefit analysis, regulatory moratoriums, and budgetary "sneak attacks" on federal agencies tasked with protecting the public and the environment. Further, we reject the half-truths and outright falsehoods that have "informed" this debate.

Risk Assessment / Cost-Benefit Analysis - Most environmental, health, and safety protection programs embody what might be called the "precautionary principle": don't take chances with your health, safety, or the environment on which all life on Earth depends. Governmental agencies tasked with protecting the public and the environment have taken the approach that if a chemical is known to be harmful, we should not be exposed to it except in doses and levels that are known to be safe. Currently, risk assessment analyses are completed by the responsible federal agencies for such chemicals prior to the enactment and enforcement of rules or standards. During these assessments, the agencies also take cost of compliance into account when developing protocols for achieving the standards. However, cost is not the only or primary factor considered in their decisions. This is as it should be.

CLEAN WATER ACTION

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The form of risk assessment proposed by Congress and embodied in H.R. 9 turns the "precautionary principle" on its head. Instead, this proposal would require that once we know that a chemical is harmful, the federal government must prove exactly how harmful it is before they can set standards. Also, scientists from affected corporations, with profit-driven motives, would have to be involved in the process, second-guessing the government's own experts. According to the U.S. Environmental Protection Agency (EPA), the process would require twenty-two additional steps before necessary protections could be implemented and at every step in the process, affected companies would have increased opportunities to take legal actions to halt or slow implementation of the proposed standard.

This would actually add to the tax burden against which the American public is crying out. The EPA alone estimates that it will have to hire nearly 1000 additional bureaucrats and increase their budget by over \$20 million in order to comply with the proposals in H.R. 9. This hardly seems a recipe for efficiency and effectiveness in government.

H.R. 9 also elevates the cost factor to one of primary concern in assessing environmental, health and safety standards. While it may be quite a simple task to place a dollar figure on the cost to business of preventing pollution, it is unimaginable that we could actually place a dollar figure on the cost to society of miscarriages, birth defects, cancer, mental retardation, lung disease, and the host of other ills that are known to be caused or exacerbated by exposure to the by-products of our industrial society. It is unimaginable that we could actually place a dollar figure on the extinction of a species, the destruction of an ecosystem, the diminished quality of the environment for future generations.

Such proposals are unacceptable, they are immoral, and they are unnecessary. As noted above, federal agencies already perform risk assessment analyses on all new rules and standards, during which cost is taken into account. Clearly, we have not gone overboard in the protection of our people and our environment. If we have, how do we account for 100 people dying in Milwaukee in 1993 from drinking water contaminated by polluted runoff? How do we account for the thousands of people that die and the hundreds of thousands that become seriously ill every year from drinking contaminated water, according to the Center for Disease Control? How do we account for the ugly brown and gray haze that envelopes most of our cities? How do we account for the rising incidence of cancers and diseases of the reproductive organs and rising rates of infertility, which scientists are now linking to exposure to organochlorines in our environment?

Americans want and demand that their government agencies be lean and efficient; they do not want them made toothless. The proposals of H.R. 9 would do this, replacing efforts to streamline our government agencies with an agenda of "paralysis by analysis".

Regulatory moratoriums - The Clean Air Act, the Clean Water Act and countless other laws, passed with bi-partisan support, signed and re-authorized by Democratic and Republican presidents alike, and supported by the people of this country, outline the principles, and in some cases, the specifics, by which federal agencies are to protect the public health and the environment. It is micro-managing of the worst kind for Congress to place a moratorium on the efforts of those agencies to comply with those mandates. Poll after poll has documented that the vast majority of Americans, generally in the range of 80 to 90 percent, think that our environmental laws should be kept or even strengthened, and that they are willing to pay for this to happen.

There is no real support for regulatory moratoriums, outside the business communities with a vested, monetary interest, but there are compelling reasons to oppose such moratoria. Every day, science is learning more about the harm we inflict on ourselves and our environment when we alter the chemical balance of our air, water and land. Our government agencies should be free to act on this new knowledge, unhampered by Congressional micro-management and interference by monied interests.

Budgetary “sneak attacks” - The House EPA Appropriations bill, passed in July, was nothing more than a back-door attack on a federal agency tasked to protect the public health and the environment. While adding even more responsibilities to these federal agencies through legislation such as H.R. 9, Congress in the Appropriations bill slashes the funds available to meet even current responsibilities. For example, additional research and staff will be needed at the EPA to comply with the requirements imposed by proposed risk assessment / cost-benefit analysis process. However, the Appropriations bill specifically cuts EPA research dollars. This bill also limits highly successful programs that allow towns and cities to protect our drinking water and to treat our waste water. For example, Minnesota still has over 105 sewage treatment systems that, during times of heavy rainfall, overflow and pour raw sewage into our surface waters. The House Appropriations bill would cut funding to small cities seeking to address this situation through infrastructure improvements. The bill also eliminates funding for low-interest loans for safe drinking water infrastructure. This is insupportable.

Specific Comments Regarding Testimony During the August 7, 1995 Hearing

As has so often happened in this debate over reforming government, apocryphal tales of the bureaucracy out of control have taken on a life of their own. Yet when these tales are tracked down to their sources, they very often are found to be exaggerated at best, or entirely false at worst. I would like to respond to some of the comments made at the August 7 hearing in St. Cloud that appear to fall into this category.

Mr. Gregg Benedict, of Long Prairie Packing Company, cited an example of how two agencies may have conflicting regulations. The example he used was that the Occupational Safety and Health Agency (OSHA) requires restaurant employees to wear steel mesh gloves while cutting carrots, but the the Minnesota Department of Health (MDH) considers this a health violation. The MDH confirms that this would be a health violation, but Mr. Roy Miner of the Minnesota OSHA office informed me that they have no such requirements for cutting carrots. In fact, he observed that the only requirements they have regarding the use of knives in restaurants is that they be sharp and, when not in use, they be contained in a block or sheath. Hardly the onerous and burdensome government some would have us fear. However, where there are conflicts between regulations, Congress should mandate a review of the regulations and a resolution to the conflict that is worked out by the responsible agencies.

Mayor Morrie Lanning of Moorhead, Minnesota described the difficulties his city has had meeting Safe Drinking Water Act and Clean Water Act requirements. In particular, he described how Moorhead had opened a “state of the art” waste water treatment system, only to be told that they must now add a \$12 million ammonia nitrate system. However, when I contacted Mr. Marvin Hora of the Minnesota Pollution Control Agency (MPCA) Water Quality Division, he explained that a state grant program had paid 90 percent of the cost of Moorhead’s waste water treatment

system and at the time it was being planned, had advised the city to construct it to easily accommodate the systems needed to meet pending ammonia standards. The city chose to ignore this advice and now finds itself facing a very expensive and nearly impossible upgrade to their existing system. According to Mr. Hora, had the city followed the MPCA's advice, the addition of the ammonia system would cost approximately one-sixth of what the city now must pay. Mr. Hora also noted that the ammonia standards were set by the EPA to protect fisheries, that no towns or cities on the Red River have been exempted from meeting them, and that Fargo -- directly across the river from Moorhead -- has had no trouble complying with the standards.

Mayor Lanning also complained about a \$14.5 million expansion and upgrade of their drinking water treatment system. I contacted the Minnesota Department of Health and spoke to Mr. Dick Clark who noted that this expansion was required to meet the growing demand that has resulted from population increases in the Moorhead area and that the only real "upgrade" to the system was a \$1 million ozonation system added reduce disinfection by-products such as halogenated organics.

A wild rice grower who testified at the open microphone complained that the US Fish and Wildlife Service (USFWS) has too much control over wetland development on agricultural land and argued that only the Department of Agriculture should have this task. However, the USFWS has only an advisory capacity to the Army Corps of Engineers on Section 404 permits. While the USFWS may work with the landowner to develop permit conditions that protect the wetlands while allowing agricultural activities, the final approval lies with the Corps. Given the devastating floods that have wrecked havoc on the Midwest over the last five years, and given that all reliable sources within the federal and state governments and scientific community affirm that these floods were exacerbated by the loss of nearly 60 percent of our wetlands in this area, it is entirely appropriate that federal agencies are cautious regarding any additional drainage or development of the remaining wetland areas.

Mr. Harold Anderson, of Anderson Trucking Service, also complained about wetland protections. He described how the EPA had held up the expansion of Highway 23 near St. Cloud because a "small portion of the land involved" was classified as wetlands. Mr. Anderson had hoped that the road would be widened to allow for a turn lane for the trucks entering and leaving his property and stated that this was needed for safety considerations. However, when I contacted the Minnesota Department of Transportation (MnDOT) public information office, they informed me that the Highway 23 project was proceeding on schedule. I spoke directly with Dave Solsrud, the MnDOT pre-design engineer in the St. Cloud office and he explained that the EPA review did not slow down the project at all. He further noted that while safer designs are always possible, MnDOT recognizes the importance of wetland protection and, having weighed all the various factors, determined that the entire 4.5 mile segment in that portion of the project would not be widened. Mr. Solsrud did not feel that this was an unsafe situation, given the levels of traffic on this portion of Highway 23.

Finally, during his closing remarks, Congressman Peterson described how government regulation has run amok, citing two "stories" he has heard about endangered species. He did not provide specifics on the species, simply referring to them as "some gopher in California or Washington state" and some kind of snake, but told of ridiculous requirements imposed on unfortunate landowners by the USFWS. He claimed that one landowner had to spend \$300,000 building concrete tunnels for the gophers and that another landowner had to lay out green carpets for the snakes. The Endangered Species Act, in particular, has been the target of outrageous and false claims and that appears to be what Congressman Peterson has heard. Without the specifics of

these tales, it is difficult to trace their origins. However, I contacted Mr. Chuck Kjos of the Minnesota field office of the USFWS, who also spoke with their Washington, D.C. office. Mr. Kjos was not familiar with these exact stories, but could confirm that the USFWS has never required private property owners to construct artificial habitat for endangered species, as this would not meet the requirements of the Endangered Species Act. He indicated that, instead, the USFWS works with landowners to set aside habitat areas, where necessary, for protection of the species while allowing a modified development project to proceed. The numbers bear out Mr. Kjos' argument. In the last ten years, fewer than one-tenth of one percent of all development projects that conflicted with an endangered species were actually stopped. Not a single project has been stopped in Minnesota. Again, where is the evidence to support the claims of onerous government regulation? We do not believe they exist.

Conclusion

Clean Water Action chose not to testify at the hearing on August 7, as a form of protest against the unbalanced testimony being solicited for this hearing and the fact that the relevant legislation had already been passed. Also, environmental groups were not originally invited to testify (our invitation was received only after we announced a press conference and only one working day before the hearing). It is our belief that, were Congress to seek balanced and open testimony from the public, with adequate advance notice of such hearings and prior to passage of the relevant legislation, they would find that the American public does not feel that our government has gone too far in protecting its citizens or the environment and that there is no real support for eviscerating the environmental laws of this land. We further believe that such fair hearings would help to dispel the erroneous and, in some cases, false stories that are circulating the halls of power regarding the harsh and arbitrary behavior of federal employees.

The federal government is large and complex by necessity, dealing as it does with large and complex problems. When problems emerge, and these are inevitable in all human systems, solving them may be extremely difficult and time-consuming. We owe it to the American public to try to find these solutions. What cannot do, must not do, is give in to the temptation to simply walk away from the complexity and difficulty of these problems, to look for simple solutions where none exist. We urge you, respectfully but in the strongest terms possible, to avoid the temptation of finding an "easy" fix that leaves the people and environment of this country at risk. Efforts to streamline, economize, and coordinate government agency efforts would be welcomed by all sides of this debate. Efforts to back away from thirty years of progress would not.

FOOTNOTE:

Following my comments at the open microphone at the hearing, I was asked by Ms. Mildred Webber of the committee staff to confirm that environmental groups had not been invited to participate in the hearings of this committee. To the best of my ability, I contacted Sierra Club and Clean Water Action offices in the states where hearings were held. I spoke with the following Sierra Club leaders: Jean Packard, Virginia; Ed Painter, Indiana; Jeff Schmidt and Joe Turner of Pennsylvania. Each either works in the Sierra Club office of that state or is in a position to have received notice of the hearing if one were received. No notice was received in any of these offices and only Joe Turner had even heard of the hearing held in Norristown, Pennsylvania. He noted that

there was little information and that he never did find out when or where it was being held. I also spoke to the following Clean Water Action staff: John Kabler, Virginia; Marie Kulick, Washington DC; Nancy Manulkin, Florida. None of these staff people had received notification of the hearings held in their states.

Given that only one environmental group in Minnesota, the Sierra Club, apparently received an invitation to the hearing in St. Cloud (but not the hearings in St. Paul or Rochester, Minnesota) and were initially told they could not testify, and given that the only people invited to testify were local businessmen, I stand by my statement at the hearing that the proceedings were stacked to provide the testimony sought by the committee. I further stand by our organization's decision not to formally testify at the hearing as a protest of this undemocratic process.

Mr. MCINTOSH. Thank you. I appreciate you submitting the written testimony in particular. It is unfortunate that you don't wish to discuss the issues.

Mr. Peterson, do you want to respond?

Mr. PETERSON. Yes. I'm not sure how all of this happened. The first that I heard about this I had my staff call you and invite you to testify. That is the honest to God truth. The first that I knew about this. And we did not—the subcommittee staff was setting up the hearings, not my personal office.

Ms. YINGLING. I find that very interesting. It was my name on the press release, but I was not the person who contacted your office to request testifying. It was not my organization that contacted your office to testify. It was the Sierra Club here in St. Cloud. They have never been contacted since they requested an opportunity to testify.

Mr. PETERSON. Well, the first that I heard from my St. Cloud office that somebody was interested and felt like they couldn't, I said that I don't know where that is coming from because I was not aware that there was any restriction on who could testify.

Now, probably by Friday you would have got the answer. That is a normal thing that people would say, well, the agenda has been set. I can see where that would be said, but I apologize. At least it was not my intention to exclude your group or any group.

Ms. YINGLING. Well, I think just given the precedent that has been set by this Congress and the hearings on both the Endangered Species Act and the Clean Water Act and the wetland provisions of stacking hearings and preventing people from testifying all across this country, I think to say that this is—

Mr. MCINTOSH. Let me remind you that this is an official proceeding of a congressional body and that you're under oath.

Ms. YINGLING. Yes, sir. I am.

Mr. MCINTOSH. Be careful before you make allegations that aren't, in fact, the case about stacking hearings and other things.

Ms. YINGLING. Sir, I have heard comments from all sorts of environmental organizations who have been refused the opportunity to testify.

Mr. MCINTOSH. We are trying to hear from anybody who would like to today to testify. And we're more interested in what you have to say about the issues on regulations than anything else.

Mr. PETERSON. Than what you have to say about us. [Laughter.] And I really would like—

Ms. YINGLING. Sir, you don't want to hear.

[Applause.]

Mr. PETERSON. I would very much appreciate it if you would take my—our paper that we've done on the EPA riders and give us your take on what you think and get a better understanding of where we're coming from.

I've met with your group, tried to have some understanding. I know we have differences of opinion, but again if you feel like you were excluded, I apologize. It was not something I personally did. As soon as I heard about it I tried to work something out. We got back this response that—not from you but from the guy in Chicago who said that he thought it was a sham and they weren't going to testify. This is not useful, I'm just telling you.

Ms. YINGLING. Well I simply wanted to clarify because of the comments that were made about us today that I felt I had to defend where we had come from on this whole thing.

Thank you.

Mr. MCINTOSH. And we do look forward to your written testimony on the issues.

Ms. YINGLING. You will receive it.

Mr. MCINTOSH. Thank you.

Mr. GUTKNECHT. Mr. Chairman, there was a gentleman and lady who had sent some information and some questions about ASCAP and how it relates to small business people. I think I can answer some of their concerns.

It relates to—well, the use of music that has been recorded and is covered by ASCAP. We have in our group now, in the new Congress, new Member from California who has, among other things, 16 gold records to his name. His name is Sonny Bono.

And the Speaker and I think the chair of the Commerce Committee have given him the responsibility of coming up with a solution to that problem.

There are many small businesses that have the problem of having radios playing in their businesses and other music that is available. And I know that they've been assaulted by some folk from ASCAP and others, and we're trying to come up with a solution.

We don't have one yet, but I will tell you that Mr. Bono is particularly sympathetic to your concerns and I think we're going to have a solution to that hopefully by the end of the year.

VOICE. They took \$20,000 out of his checking account, including his wife's teacher's retirement and Social Security money.

Mr. MCINTOSH. You may have to come testify. How could they take money out of your checking account?

I don't know if we have enough time, because we have to get going, but did the Government take it out of your checking account?

VOICE. It was by the bank to be held by the attorneys—

Mr. MCINTOSH. I have people from my office here. We'll get involved with this and see if we can help you with it.

VOICE. This guys last year they were going to provide—where we could sales and cards and socialization. And it is being taken away from us.

Mr. MCINTOSH. Thank you.

Were there other individuals who wanted to testify?

Ms. ARNOLD. I don't think I need to be sworn in for this. I'm Rose Arnold, chair of the Stearns County Board. I simply want to thank you for holding your hearings here in Stearns County, the most wonderful county in Minnesota.

I hope that you like your new building here and found the accommodations working well.

Mr. MCINTOSH. It has been excellent.

Ms. ARNOLD. This is the first time, I believe, that this room has been filled to overflowing, and I hope I don't see this at one of our board meetings. [Laughter.]

Mr. MCINTOSH. Thank you very much.

Yes, sir. Did you want to testify?

Mr. MINKS. Thank you, gentleman. I am Bob Minks. I'm with Minnesota Plant Food and Chemicals Association. We're a trade association representing fertilizer and agricultural chemical retail dealers in the State of Minnesota.

I want to thank you for this open microphone opportunity. Not being aware of it, I do not have typed comments. I will try to keep this very brief.

There are three regulations that I would like to make reference to. The first one is one that has already been made reference to by Mr. Greg Benedict from the Long Prairie Packing Co. in regards to a fine he received for not reporting in what was considered a timely manner.

I would like to suggest to you gentleman, and you may be aware of this already, Congressman David Minge is trying to develop some legislation to correct that problem and make it a one-call system rather than a multical system.

The second item that I wish to speak to is the Federal Highway Administration regulations on drug and alcohol testing for commercial drivers license holders. This regulation has basically been developed for long-haul over the road truck drivers, but it does affect the small retail dealer.

Where the problem arises is our members, when they are transporting hazardous materials they need to be involved in the drug and alcohol testing, and this is in a very short period of time during the year.

It is a limited amount of time and a limited number of miles from home. Most of this hauling is done less than 50 miles and in many cases less than 15 miles from home. It is done over a 3 to 6-week period during the course of the year. And yet we have to drug and alcohol these people 12 months of the year through random testing.

We would like to suggest that we have some kind of a modified version of it. I'm not opposed to the drug and alcohol testing, but some kind of modified version that is more manageable for the seasonal type operation.

Mr. MCINTOSH. Did you have one other thing you wanted to address?

Mr. MINKS. Briefly, the Clean Air Act, the air quality permitting procedures in regards to emissions of dust particles into the air, the regulation states that it has to be calculated on the potential to emit which is based on an operation that runs 24 hours a day, 365 days of the year.

And under that guideline our members—many of our members are pulled into the regulation because, based on that calculation they are over 25 tons per year when in fact the seasonal business of moving fertilizer is just a few weeks out of the year, their actual emissions are only 2 to 3 tons. For the smaller ones it is even less than that.

I would like to ask that you give some consideration to taking the actual emissions into consideration and not the potential emissions. We do not move fertilizer products from the plant to the farm 365 days a year.

Mr. MCINTOSH. You would like to be operating 365 days, 24 hours a day, but you don't?

Mr. MINKS. Well, if we could make it work that would be nice, yes, but it is not logical and not practical.

Gentleman, again, thank you very much.

Mr. MCINTOSH. Thank you.

Mr. MINKS. Would you like these written comments to be forwarded to you?

Mr. MCINTOSH. If you have some additional written ones, I would ask unanimous consent the record be held open for 10 days.

Mr. MINKS. OK. Should I direct it to you, Mr. McIntosh?

Mr. MCINTOSH. Yes. To the full subcommittee at my attention. One of the staff can give you the mailing address.

[The information referred to follows:]

MINNESOTA PLANT FOOD AND CHEMICALS ASSOCIATION

1821 University Avenue • Room 204 • Saint Paul, Minnesota 55104 • (612) 644-6235 • FAX (612) 644-9348

August 11, 1995

Chairman David McIntosh
Subcommittee on National Economic Growth, Natural Resources & Regulatory
Affairs
B377 Rayburn H.O.B.
Washington, D.C. 20505

Representative McIntosh,

Thank you for the opportunity to testify at the hearing held in St. Cloud, MN on August 7, 1995.

As a follow-up to my comments I wish to submit the following:

1. Operating permits under the Clean Air Act Amendments of 1990.
The retail fertilizer dealers are asking for relief from calculating emissions based on *potential to emit*. Instead calculations should be based on actual emissions. As background, additional information is included detailing the problem the retail fertilizer industry has with the regulation. In addition, based on fertilizer tonnage data from the Minnesota Department of Agriculture, the average tonnage per year for the 550 retail fertilizer plants in Minnesota is 2609 tons, approximately one third the size of the group Minnesota Plant Food and Chemicals Association (MPFCA) surveyed.
2. Alcohol Testing.
The retail fertilizer dealers are asking for relief from requiring *seasonally employed* people be included in random alcohol testing. In a pilot study completed by the Department of Transportation, it was found less than one percent of drivers exceeded the alcohol threshold levels. Additional background information about the industries concerns and a suggested alternative are included on separate page.
3. HAZMAT Spills notification.
The retail fertilizer dealers are asking for a change to a one call system and a one hour time frame in the notification system currently in place under CERCLA (Superfund).

Whenever a release of a hazardous material occurs the firm owning the material must report by telephone to three agencies immediately (within 15 minutes). The most important concern of the retail fertilizer dealer is to prevent an incident from causing additional harm to the public and environment. This will often take more then the 15 minutes allowed to make the calls. Additional background information is included.

Thank you for this opportunity to express these concerns and share possible solutions with the Subcommittee

Sincerely,

A handwritten signature in dark ink, appearing to read "Bob Minks".

Bob Minks
Regulatory Compliance Manager

cc. Representative Collin Peterson
Representative Gil Gutknecht
Representative David Minge

MINNESOTA PLANT FOOD AND CHEMICALS ASSOCIATION

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ALCOHOL TESTING

Background

This regulation, will effect most retail fertilizer dealers January 1, 1996, (most of them have less then 50 CDL drivers). The regulation calls for testing to be completed immediately before, during or immediately after a sensitive activity. The DOT calls for testing to be completed randomly each quarter.

The problem

Retail fertilizer dealers are dependent on many seasonally employed people. These people work from six to twelve weeks of each year and much of this time is spent doing non sensitive activities. In addition, when they are involved in sensitive activities, much of this is done after what is considered "normal business hours" for most collection / testing sites. Therefore random alcohol testing cannot be completed as is currently required. The alternative would be for each firm to have their own technician and equipment to complete the testing. However, this would be cost prohibitive for most of these firms because of the limited size of the operations and the limited number of employees they have.

Solution

Firms who utilize seasonal personal need to be allowed to utilize supervisory persons, trained in the identification of alcohol abuse symptoms, to prevent a suspected alcohol abuse individual from performing sensitive activities. This could be done without the random testing requirement. This would be in addition to what is all ready taking place in the industry through the firms insurance carrier. Many insurance companies will not allow a firm to employ a person, as a driver of any licensed vehicle, who has a DWI on their record.

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HAZMAT SPILLS NOTIFICATION REQUIREMENTS

Background

Under CERCLA (Superfund) and EPCRA (Community Right-to-Know), firms with releases of hazardous materials and substances are required to call the following numbers “immediately”:

Local Authorities	9 - 1 - 1 (local number)
State Agencies	(800) 422-0798 (for Minnesota)
National Response Center	(800) 424-8802 (EPA)

Problem

A committee document has defined “immediately” to mean within 15 minutes. Accordingly, EPA has established an enforcement policy for EPCRA and CERCLA setting the following fines for delays in reporting the spills or releases to any or all three entities (local, state or federal):

< 15 minutes	= no fine	1 hour - 2 hours	= \$ 16,500
15 minutes - 1 hour	= \$ 8,250	> 2 hours	= \$ 25,000

In a few cases, ag dealers in Minnesota have not called all three (3) numbers in the 15 minute “immediate” time frame resulting in fines of up to \$65,000. Note, these dealers did call the local responders (fire and police) who got the release under control resulting in no injuries or deaths.

It just doesn’t make sense to penalize firms for trying to meet the requirements of law and cleanup any spills they may have. In addition, what can a federal agency in Washington, DC do to control or cleanup a spill in a timely manner?

Solution

Change the laws to increase the reporting time to one hour and change the laws to allow firms to call only one number (local, state or federal) when reporting a spill. The entity receiving the call can inform the other two of the incident.

MINNESOTA PLANT FOOD AND CHEMICALS ASSOCIATION

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AIR QUALITY PERMITS POTENTIAL TO EMIT STANDARD

Background

Under the federal Clean Air Act Amendments of 1990, facilities with air emissions are required to obtain operating permits if they meet certain thresholds. These thresholds are determined by the *potential to emit* or taking maximum output and multiplying it by 24 hours a day for 365 days a year.

The operating air permits in most states are being phased in over a period of two years on the basis of a firm's Standard Industrial Classification (SIC) code. Most agricultural firms have SIC codes of 51xx. These firms have until December 15, 1995 to file permits and pay the annual fee.

Problem

Surveying ten fertilizer dealerships around Minnesota, the average output per hour is 24.9 tons, with a total annual tonnage sold of 7200 tons. An EPA study concluded the average emissions released from a fertilizer plant is .6 lbs of emissions per ton of fertilizer sold.

Based on the average output above, the *actual* emissions per year is **2.16 tons**. Using the federal threshold of *potential to emit* emissions become **65.44 tons**.

As one can easily see, the emissions calculated under *potential to emit* is 30 times the actual amount released during the year.

Solution

When determining if an operating air quality permit is required, allow seasonal firms to use the actual amount released instead of the potential to emit.

The concept of *potential to emit* does not fit agriculture. There are only so many acres of land to farm. Thus, only so many tons of fertilizer will be sold during the year. Why should firms be required to obtain permits for emissions they will never produce during the year?

Mr. MINKS. Good. Thank you very much.

Mr. MCINTOSH. Was there one more?

Mr. COLBURN. I will be very brief.

I'm Dan Colburn. I'm chairman and CEO of Colburn, Inc. We are a retail company operating supermarkets and convenience stores, mostly in Minnesota, one in Iowa and one in Fargo, ND.

I'm here to urge the House Members to support the enactment of H.R. 1114, which is, as you probably know, the bill that would allow 16 and 17 year olds to throw cardboard boxes in bailers.

I think it fits well into the theme of what's been talked about today, in fact, because it is an environmental issue in that we can recycle that paper.

For those that don't know, currently the Department of Labor has been enforcing a regulation and fining supermarket operators—fortunately not us yet—for allowing 16 and 17 year olds not to operate paper bailers, just to throw boxes in.

I would hope that H.R. 1114 would be a candidate for the corrections days on September 12.

Thank you very much.

Mr. MCINTOSH. Indeed it is. Thank you.

There are two more gentleman here and then I'm afraid we're going to have to close it out at that point.

Mr. WEBB. I'm Richard Webb and I'm a local union president and I'm also a government employee.

You talk about unfunded mandates on the private sector, well, you haven't worked for the government. You guys are sitting in Congress writing rules of laws and legislation, putting mandates on government employees to do, when there's no funds to do it.

So employees are—we have to do everything you've mandated in the past, plus we have to do everything you're going to mandate in the future, and plus we're downsizing.

So one of these days when you guys sit in your committees, when you sit in Full House, you have to start taking this into consideration. If you're going to continually cut the size of government, you are finally going to have to sit down and look; what is government doing?

You're all doing a lot of talking; you're all cutting government employees, but you're not cutting the work that has to be done. You talk about privatizing. That's not the answer in all cases. So you're going to have to look and see, actually sit down and see what is the mission of government, what do we want to do, what do the American people want us to provide for them. And I do not see that coming and I doubt that it is coming.

Mr. MCINTOSH. You are exactly right. That needs to be our first question. Let me ask you from your experience: What do you recommend as ways that we could incorporate suggestions coming from employees outside of Washington on how to be more effective with the personnel we have and the resources we have, and how we could help set some of these priorities?

Mr. WEBB. First of all, you should get Washington out of the loop. Why send something to Washington?

I work at the VA hospital. Say you have problems at the VA Hospital and there is a solution to the problem, and it's all within the law or so-so; some of the laws are kind of "iffy" and fishy. Why

can't more control be given locally? Why does everything have to center around Washington?

The United States does not revolve around Washington, at least not to most of the people I talk to. You control a lot, you mandate a lot, you regulate a lot, and a lot of those are needed.

Mr. PETERSON. Mr. Chairman, I would like to say: I think this is exactly what this committee is trying to do. We are catching holy hell for trying to do it, from all quarters. I'm just telling you. I mean, it is not popular because all of these interest groups are in Washington and they're on our case.

But I think that's what we're trying to do. The way that you reduce the workload is you get rid of all of these regulations and bureaucracy that doesn't do anybody any good. And that is what we're trying to do here.

What's happening is people are just downsizing. I give the President and the Vice President credit for what they're trying to do with their commission, you know, trying to reinvent government. But frankly, there is a lot of fluff in there.

You're right. You guys are getting dumped on. I understand that. I think that this committee, you know, from the little bit of jurisdiction that we have are trying to do our part. But I'm just telling you it is not easy.

Mr. WEBB. I understand it is not easy, but as the guy with the environmental concern stated, what are the alternatives. Not only with how Federal employees are going to deal with it and the citizens of the United States and the services they provide and how you guys are going to change regulations, but as long as labor issues, health and safety issues—there is a lot of talk coming out: we're going to cut this, we're going to gut this, we're going to do this, that, and the other thing. But what are the alternatives across the board?

Everybody is talking about cutting and dismantling. But what is going to be left? Where are the protections going to be for the worker in America? We're going to put businesses in control of mandating health and safety. Well, that's fine.

There are a lot of businesses that are committed to that. I will not take that away from them, but if you set up something in the private sector to do that, who do you think eventually is going to have to control those organizations? It is going to be the businesses and the corporations that have the most to gain. They're eventually going to rise to the top and the worker is going to lose. They always have, they probably always will.

Mr. MCINTOSH. Let me give you one example that I think may be a good model in the private sector and that is underwriter laboratories. If you look at any electrical equipment, you see the little UL tag, that is actually financed by the industry, but it was set up as an independent body where they couldn't have the industry telling them what to do and what results should come out.

People will only pay attention to them as long as they keep a high standard of safety. That has succeeded fairly well.

One of the things that I've tried to think about is are there ways we could replicate that? I wanted to run two ideas by you as a Federal employee to see if you think these would work well.

One was to essentially give similar incentives for the employees to be responsive to the customer, whomever it is they're helping, maybe give them a bonus at the end of the year based on evaluations from the public who interacted with them.

And the other was to lift some of the regulations, but let them have the result that they were trying to accomplish and, say, the Minnesota arm of OSHA would as a whole be rewarded if the number of safety incidences went down in the State, and figure out ways of creating goals like that that weren't paperwork goals, but actual safety goals and not violation targets, but actual accomplishment of fewer problems in the worksite.

Do you think those two approaches would work in a Federal employment situation?

Mr. WEBB. I think as far as the health and safety aspects go, we at St. Cloud VA Medical Center have a pretty good record nationally. We are very low. We always have been.

Mr. MCINTOSH. But you don't get rewarded or recognized for that because you're lumped in with everybody else, right?

Mr. WEBB. Yes; but there's no money in the Federal Government to recognize things like that. Everything is being cut. That's one of those niceties, that we never really put a lot of money into it and now we can't afford to.

Mr. MCINTOSH. Let me actually give you one ray of hope in that, and people who want to see us make deeper cuts are not happy about this, but a lot of times you hear about cuts in Washington, coming out of Washington, when in fact they're not really cutting. They're slowing the rate of growth and decreasing it, so there will be funds there.

Our challenge will be to use them better. That's what I'm trying to search for.

Mr. WEBB. When I went to school they didn't teach regressional math, so I didn't learn. [Laughter.]

Mr. MCINTOSH. Thank goodness.

Mr. WEBB. I will just leave it there. Thank you.

Mr. MCINTOSH. I appreciate your insight, and if you have any suggestions on specifics or reactions to this, please let us know.

Mr. WEBB. Thank you.

Mr. MCINTOSH. Thank you very much.

We have one more witness. If you could come forward and give us your name and where you're from.

Mr. WILKENS. My name is Drew Wilkenson. I live in Rockford. I am another founding member of the River Warren Research Committee.

First, I'm basically here because like Congressman Peterson said, you're under attack and I want to give you my support. I also want to say that I basically agree with what the previous gentleman said. That is what we need to hear more of because you can't just keep cutting spending and expect things to work. You've got to use the word "repeal." Repeal, repeal, repeal.

Now, finally, I appreciate what you are espousing to be the problem in cutting regulation. I just want to say I am 99.999 percent sure that you will not go far enough. All I can say is damn the torpedoes, full speed ahead.

Thank you.

Mr. MCINTOSH. Thank you very much. I appreciate that. That's a very good way to end.

Let me mention that there were two people who had submitted written testimony and there may be others given to the staff. I would ask unanimous consent that Larry Schultz and James Woodman's materials be included in the record and anyone else who has given written materials to one of the staff members.

Seeing no objection, it shall be done. Also, unanimous consent to hold open the record for 10 additional days to receive additional materials from any of the witnesses.

This committee is now adjourned. Thank you all for coming today, an excellent session. [Applause.]

[Whereupon, at 4:45 p.m., the field hearing was concluded.]

